



April 7, 2023

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# ENGROSSED HOUSE BILL No. 1623

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DIGEST OF HB 1623 (Updated April 6, 2023 12:26 pm - DI 149)

**Citations Affected:** IC 4-3; IC 4-21.5; IC 4-22; IC 12-10.5; IC 13-14; IC 13-19; IC 14-10; IC 15-16; IC 25-1; IC 27-1; IC 34-52; noncode.

**Synopsis:** Administrative rulemaking. Makes various procedural changes concerning the adoption of administrative rules, including the following: (1) Requires budget agency and office of management and budget review of a regulatory analysis of all proposed rules. (2) Requires a state budget committee review of rules adding or increasing fees, fines, or civil penalties. (3) Requires publication of the text of a proposed rule in the first comment period and allows a proposed rule to be adopted after one comment period if no substantive public testimony is received and the rule is not more stringent than applicable federal standards. (4) Replaces various laws granting emergency rulemaking authority with a description of the circumstances when emergency rulemaking (renamed "provisional" rules and "interim" rules) may be used, increases governor and attorney general oversight of emergency rules, and adds a public comment period for interim rules. (5) Reduces from seven to five years the time in which rules need to be readopted to remain effective. (6) Requires agencies to webcast public hearings and allow remote testimony. Prohibits state standards  
(Continued next page)

**Effective:** Upon passage; January 1, 2023 (retroactive); July 1, 2023.

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## Bartels, Miller D, Jordan

(SENATE SPONSORS — GARTEN, KOCH)

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January 19, 2023, read first time and referred to Committee on Government and Regulatory Reform.

February 14, 2023, amended, reported — Do Pass.

February 16, 2023, read second time, ordered engrossed.

February 17, 2023, engrossed.

February 20, 2023, read third time, passed. Yeas 73, nays 24.

SENATE ACTION

February 28, 2023, read first time and referred to Committee on Judiciary.

April 6, 2023, amended, reported favorably — Do Pass.

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EH 1623—LS 7025/DI 125



Digest Continued

for disposal of coal combustion residuals to be more stringent than federal standards. Requires the general assembly to enact legislation adopting a federal classification of a substance as restricted pesticide and prohibits state pesticide regulations that are more stringent than federal regulation. Permits a person to recover attorney fees if an agency issues an order that is based on an invalid rule or issued without legal authority. Permits an applicant or licensee to recover damages if a professional or occupational licensing agency fails to adopt a rule required to obtain a license. Repeals superseded statutes and makes cross reference, name, and other conforming changes.

**EH 1623—LS 7025/DI 125**



April 7, 2023

First Regular Session of the 123rd General Assembly (2023)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2022 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1623

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A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 4-3-22-13, AS AMENDED BY P.L.5-2015,  
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2023]: Sec. 13. (a) Except as provided in subsection (c), the  
4 OMB shall perform a cost benefit analysis upon each proposed rule and  
5 provide to:  
6 (1) the governor; and  
7 (2) the legislative council;  
8 an assessment of the rule's effect on Indiana business. The OMB shall  
9 submit the cost benefit analysis to the legislative council in an  
10 electronic format under IC 5-14-6.  
11 (b) After June 30, 2005, the cost benefit analysis performed by the  
12 OMB under this section with respect to any proposed rule that has an  
13 impact of at least five hundred thousand dollars (\$500,000) shall  
14 replace and be used for all purposes under IC 4-22-2 in lieu of the  
15 fiscal analysis previously performed by the legislative services agency

EH 1623—LS 7025/DI 125



1 under IC 4-22-2.

2 ~~(c) The OMB and the budget agency shall review a regulatory~~  
 3 ~~analysis and proposed rule submitted by an agency under~~  
 4 ~~IC 4-22-2-22.8. In preparing a cost benefit reviewing a regulatory~~  
 5 ~~analysis and proposed rule under this section, the OMB shall consider~~  
 6 ~~in its analysis any verified data provided voluntarily by interested~~  
 7 ~~parties, regulated persons, and nonprofit corporations whose members~~  
 8 ~~may be affected by the proposed rule. A cost benefit analysis prepared~~  
 9 ~~under this section is a public document, subject to the following:~~

10 (1) This subsection does not empower the OMB or an agency to  
 11 require an interested party or a regulated person to provide any  
 12 materials, documents, or other information. ~~in connection with a~~  
 13 ~~cost benefit analysis under this section.~~ If an interested party or a  
 14 regulated person voluntarily provides materials, documents, or  
 15 other information to the OMB or an agency, ~~in connection with a~~  
 16 ~~cost benefit analysis under this section,~~ the OMB or the agency,  
 17 as applicable, shall ensure the adequate protection of any:

18 (A) information that is confidential under IC 5-14-3-4; or

19 (B) confidential and proprietary business plans and other  
 20 confidential information.

21 (2) If an agency has adopted rules to implement IC 5-14-3-4,  
 22 interested parties and regulated persons must submit the  
 23 information in accordance with the confidentiality rules adopted  
 24 by the agency to ensure proper processing of confidentiality  
 25 claims. The OMB and any agency involved in proposing the rule,  
 26 or in administering the rule upon the rule's adoption, shall  
 27 exercise all necessary caution to avoid disclosure of any  
 28 confidential information supplied to the OMB or the agency by an  
 29 interested party or a regulated person.

30 ~~(2) The OMB shall make the cost benefit analysis and other~~  
 31 ~~related public documents available to interested parties, regulated~~  
 32 ~~persons, and nonprofit corporations whose members may be~~  
 33 ~~affected by the proposed rule at least thirty (30) days before~~  
 34 ~~presenting the cost benefit analysis to the governor and the~~  
 35 ~~legislative council under subsection (a):~~

36 ~~(d) If the OMB or an agency is unable to obtain verified data for the~~  
 37 ~~cost benefit analysis described in subsection (c); the OMB shall state~~  
 38 ~~in the cost benefit analysis which data were unavailable for purposes~~  
 39 ~~of the cost benefit analysis:~~

40 ~~(e) If the OMB finds that a proposed rule is:~~

41 ~~(1) an adoption or incorporation by reference of a federal law;~~  
 42 ~~regulation; or rule that has no substantive effect on the scope or~~



1 intended application of the federal law or rule; or  
 2 (2) a technical amendment with no substantive effect on an  
 3 existing Indiana rule;

4 the OMB may not prepare a cost benefit analysis of the rule under this  
 5 section. The agency shall submit the proposed rule to the OMB with a  
 6 statement explaining how the proposed rule meets the requirements of  
 7 this subsection. If the OMB finds that the rule meets the requirements  
 8 of this subsection, the OMB shall provide its findings to the governor  
 9 and to the legislative council in an electronic format under IC 5-14-6.  
 10 If the agency amends or modifies the proposed rule after the OMB  
 11 finds that a cost benefit analysis may not be prepared for the rule, the  
 12 agency shall resubmit the proposed rule to the OMB either for a new  
 13 determination that the rule meets the requirements of this subsection,  
 14 or for the OMB to prepare a cost benefit analysis of the rule under this  
 15 section.

16 SECTION 2. IC 4-21.5-2-8 IS ADDED TO THE INDIANA CODE  
 17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 18 1, 2023]: **Sec. 8. The amendments made to IC 4-21.5-3-27.5 and**  
 19 **IC 34-52-2-1.5 in the 2023 session of the general assembly only**  
 20 **apply to agency actions commenced under IC 4-21.5-3 after June**  
 21 **30, 2023.**

22 SECTION 3. IC 4-21.5-3-27.5, AS ADDED BY P.L.199-2021,  
 23 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 24 JULY 1, 2023]: Sec. 27.5. In a proceeding under this chapter  
 25 concerning an agency action, the administrative law judge shall order  
 26 the agency to pay the reasonable attorney's fees incurred in the  
 27 proceeding by the **prevailing** party challenging the agency action if:

28 (1) the party challenging the agency action proves, by a  
 29 preponderance of the evidence, that:

30 (1) (A) the agency's action was frivolous or groundless; or

31 (2) (B) the agency pursued the action in bad faith;

32 (2) the agency action was based on an invalid rule, as  
 33 provided in IC 4-22-2-44; or

34 (3) the agency has failed to demonstrate that the agency acted  
 35 within its legal authority.

36 SECTION 4. IC 4-22-2-0.1, AS AMENDED BY P.L.53-2014,  
 37 SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 38 JULY 1, 2023]: Sec. 0.1. (a) The amendments made to this chapter by  
 39 P.L.44-1995 apply as follows:

40 (1) The amendments made to sections 13, 19, 23, 25, and 28 of  
 41 this chapter apply to a rulemaking action that commences after  
 42 June 30, 1995.



1 (2) The addition of sections 23.1 and 46 (repealed) of this chapter  
 2 applies to a rulemaking action that commences after June 30,  
 3 1995.

4 **(b) This chapter (as effective January 1, 2023) continues to**  
 5 **apply after June 30, 2023, to a rulemaking action that is**  
 6 **commenced under this chapter before July 1, 2023, and is pending**  
 7 **on July 1, 2023.**

8 SECTION 5. IC 4-22-2-3 IS AMENDED TO READ AS FOLLOWS  
 9 [EFFECTIVE JULY 1, 2023]: Sec. 3. (a) "Agency" means any officer,  
 10 board, commission, department, division, bureau, committee, or other  
 11 governmental entity exercising any of the executive (including the  
 12 administrative) powers of state government. The term does not include  
 13 the judicial or legislative departments of state government or a political  
 14 subdivision as defined in IC 36-1-2-13.

15 (b) "Rule" means the whole or any part of an agency statement of  
 16 general applicability that:

17 (1) has or is designed to have the effect of law; and

18 (2) implements, interprets, or prescribes:

19 (A) law or policy; or

20 (B) the organization, procedure, or practice requirements of an  
 21 agency.

22 **The term includes a fee, a fine, a civil penalty, a financial benefit**  
 23 **limitation, or another payment amount set by an agency that**  
 24 **otherwise qualifies as a rule.**

25 (c) "Rulemaking action" means the process of formulating or  
 26 adopting a rule. The term does not include an agency action.

27 (d) "Agency action" has the meaning set forth in IC 4-21.5-1-4.

28 (e) "Person" means an individual, corporation, limited liability  
 29 company, partnership, unincorporated association, or governmental  
 30 entity.

31 (f) "Publisher" refers to the publisher of the Indiana Register and  
 32 Indiana Administrative Code, which is the legislative council, or the  
 33 legislative services agency operating under the direction of the council.

34 (g) The definitions in this section apply throughout this article.

35 SECTION 6. IC 4-22-2-13, AS AMENDED BY P.L.2-2007,  
 36 SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 37 JULY 1, 2023]: Sec. 13. (a) Subject to subsections (b), (c), and (d), this  
 38 chapter applies to the addition, amendment, or repeal of a rule in every  
 39 rulemaking action.

40 (b) This chapter does not apply to the following agencies:

41 (1) Any military officer or board.

42 (2) Any state educational institution.



1 (c) This chapter does not apply to a rulemaking action that results  
2 in any of the following rules:

3 (1) A resolution or directive of any agency that relates solely to  
4 internal policy, internal agency organization, or internal procedure  
5 and does not have the effect of law.

6 (2) A restriction or traffic control determination of a purely local  
7 nature that:

8 (A) is ordered by the commissioner of the Indiana department  
9 of transportation;

10 (B) is adopted under IC 9-20-1-3(d), IC 9-21-4-7, or  
11 IC 9-20-7; and

12 (C) applies only to one (1) or more particularly described  
13 intersections, highway portions, bridge causeways, or viaduct  
14 areas.

15 (3) A rule adopted by the secretary of state under IC 26-1-9.1-526.

16 (4) An executive order or proclamation issued by the governor.

17 **(5) A rule adopted by the board of trustees of the Indiana**  
18 **public retirement system, as provided in IC 5-10.5-4-2.**  
19 **However, the board shall submit rules adopted by the board**  
20 **to the publisher for publication in the Indiana Register.**

21 (d) Except as specifically set forth in IC 13-14-9:

22 **(1) IC 13-14-9 provides supplemental procedures for notice**  
23 **and public comment concerning proposed rules for the boards**  
24 **listed in IC 13-14-9-1; and**

25 **(2) the department of environmental management and the**  
26 **boards listed in IC 13-14-9-1 shall comply with the procedures**  
27 **in IC 13-14-9 in lieu of complying with sections 24, 26, 27, and**  
28 **29 (except section 29(c)) of this chapter. do not apply to**  
29 **rulemaking actions under IC 13-14-9.**

30 **In adopting rules, all other provisions of IC 4-22-2 apply to these**  
31 **agencies.**

32 SECTION 7. IC 4-22-2-15 IS AMENDED TO READ AS  
33 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 15. Any rulemaking  
34 action that this chapter allows or requires an agency to perform, other  
35 than final adoption of a rule under section 29, ~~or 37.1~~, **or 37.2** of this  
36 chapter **or IC 13-14-9**, may be performed by the individual or group of  
37 individuals with the statutory authority to adopt rules for the agency, a  
38 member of the agency's staff, or another agent of the agency. Final  
39 adoption of a rule under section 29, ~~or 37.1~~, **or 37.2** of this chapter **or**  
40 **IC 13-14-9**, including readoption of a rule that is subject to sections 24  
41 through 36 or to section 37.1 of this chapter and recalled for further  
42 consideration under section 40 of this chapter, may be performed only



1 by the individual or group of individuals with the statutory authority to  
2 adopt rules for the agency.

3 SECTION 8. IC 4-22-2-17 IS AMENDED TO READ AS  
4 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 17. (a) IC 5-14-3  
5 applies to the text of a rule that an agency intends to adopt from the  
6 earlier of the date that the agency takes any action under ~~section 24~~  
7 **section 23** of this chapter, otherwise notifies the public of its intent to  
8 adopt a rule under any statute, or adopts the rule.

9 (b) IC 5-14-3 applies both to a rule and to the full text of a matter  
10 directly or indirectly incorporated by reference into the rule.

11 (c) **Subject to subsection (e), after June 30, 2023, a public**  
12 **hearing or other public meeting in which an agency receives**  
13 **comments concerning a rulemaking action from the general public**  
14 **must be webcast on the state website during the hearing or meeting**  
15 **for the public to view the proceedings. Webcasts must be archived**  
16 **as public records on the state website.**

17 (d) **Subject to subsection (e), after June 30, 2023, an agency that**  
18 **conducts a public hearing or other public meeting at which the**  
19 **agency receives comments concerning a rulemaking action from**  
20 **the general public must provide a method by which members of the**  
21 **public can attend and comment remotely.**

22 (e) **The office of management and budget in consultation with**  
23 **the office of technology and the publisher shall establish how and**  
24 **where webcasts will be available, how agencies will provide**  
25 **opportunities for the general public to attend and comment**  
26 **remotely, and where notices of upcoming webcasts will be posted.**  
27 **The governor, by executive order, may delay the implementation**  
28 **of subsection (c) or (d), or both, for one (1) or more agencies if the**  
29 **governor finds that implementation of subsection (c) or (d), or**  
30 **both, is not technically feasible. The governor shall include specific**  
31 **findings concerning the reasons for a delay in the executive order.**  
32 **A delay under this subsection may not extend beyond December 31,**  
33 **2025.**

34 (f) **Inadequacy or insufficiency of webcasting, archive of**  
35 **webcasting, or remote access under this section or a statement in**  
36 **a notice of the availability of webcasting, archive of webcasting, or**  
37 **remote access does not invalidate a rulemaking action.**

38 SECTION 9. IC 4-22-2-17.5 IS ADDED TO THE INDIANA CODE  
39 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
40 1, 2023]: Sec. 17.5. (a) **The legislative services agency shall provide**  
41 **electronic summaries or electronic copies of documents submitted**  
42 **to the publisher under this article or IC 13-14-9 to legislators and**





1 legislative committees in the manner and on the schedule specified  
 2 by the legislative council or the personnel subcommittee of the  
 3 legislative council acting for the legislative council.

4 (b) If requested in the manner specified by the legislative council  
 5 or the personnel subcommittee of the legislative council acting for  
 6 the legislative council, an agency shall provide to the legislative  
 7 services agency any data, studies, or analyses relied on by the  
 8 agency to develop a regulatory analysis or a revised regulatory  
 9 analysis. The agency shall comply with any policies adopted by the  
 10 legislative council or the personnel subcommittee of the legislative  
 11 council governing the format, timing, and manner of delivery of  
 12 the data, studies, or analyses.

13 SECTION 10. IC 4-22-2-19, AS AMENDED BY P.L.53-2014,  
 14 SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 15 JULY 1, 2023]: Sec. 19. (a) ~~Except as provided in section 23.1 of this~~  
 16 ~~chapter,~~ This section does not apply to the adoption of rules

17 ~~(1)~~ required to receive or maintain:

18 ~~(A)~~ (1) delegation;

19 ~~(B)~~ (2) primacy; or

20 ~~(C)~~ (3) approval;

21 for state implementation or operation of a program established  
 22 under federal law.

23 ~~(2)~~ that amend an existing rule;

24 ~~(3)~~ required or authorized by statutes enacted before June 30,  
 25 1995; or

26 ~~(4)~~ required or authorized by statutes enacted before June 30,  
 27 1995, and recodified in the same or similar form after June 29,  
 28 1995, in response to a program of statutory recodification  
 29 conducted by the code revision commission.

30 (b) If an agency will have statutory authority to adopt a rule at the  
 31 time that the rule becomes effective, the agency may conduct any part  
 32 of its rulemaking action before the statute authorizing the rule becomes  
 33 effective.

34 (c) However, an agency shall:

35 (1) begin ~~the a~~ rulemaking process **needed to implement the**  
 36 **statutory change** not later than sixty (60) days after the effective  
 37 date of the statute that authorizes the rule; or

38 (2) if an agency cannot comply with subdivision (1), provide  
 39 electronic notice to the publisher stating the reasons for the  
 40 agency's noncompliance.

41 (c) For purposes of this section, a rulemaking process is  
 42 commenced when:



1           **(1) the agency publishes a proposed rule under section 23 or**  
 2           **37.2 of this chapter; or**

3           **(2) in the case of a change in a statute described in section 38**  
 4           **of this chapter, the date the agency files with the publisher a**  
 5           **rule document under section 38 of this chapter.**

6           **If an interim rulemaking procedure is commenced under section**  
 7           **37.2 of this chapter, the agency shall commence a permanent**  
 8           **rulemaking process under section 23 of this chapter before the**  
 9           **adopted interim rule expires.**

10           SECTION 11. IC 4-22-2-19.5 IS AMENDED TO READ AS  
 11           FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 19.5. (a) To the extent  
 12           possible, a rule adopted under this article or ~~under IC 13-14-9.5~~  
 13           **IC 13-14-9** shall comply with the following:

14           (1) Minimize the expenses to:

15           (A) regulated entities that are required to comply with the rule;

16           (B) persons who pay taxes or pay fees for government services  
 17           affected by the rule; and

18           (C) consumers of products and services of regulated entities  
 19           affected by the rule.

20           (2) Achieve the regulatory goal in the least restrictive manner.

21           (3) Avoid duplicating standards found in state or federal laws.

22           (4) Be written for ease of comprehension.

23           (5) Have practicable enforcement.

24           (b) Subsection (a) does not apply to a rule that must be adopted in  
 25           a certain form to comply with federal law.

26           SECTION 12. IC 4-22-2-19.6 IS ADDED TO THE INDIANA  
 27           CODE AS A NEW SECTION TO READ AS FOLLOWS  
 28           [EFFECTIVE JANUARY 1, 2023 (RETROACTIVE)]: **Sec. 19.6. (a)**  
 29           **A rule adopted under this article or IC 13-14-9 that includes a fee,**  
 30           **fine, or civil penalty must comply with this section. Subsections (b),**  
 31           **(c), and (d) do not apply to a rule that must be adopted in a certain**  
 32           **form to comply with federal law.**

33           **(b) For each fee, fine, or civil penalty imposed by an agency that**  
 34           **is not set as a specific amount in a state law, a rule must describe**  
 35           **the circumstances for which the agency will assess a fee, fine, or**  
 36           **civil penalty and set forth the amount of the fee, fine, or civil**  
 37           **penalty:**

38           (1) as a specific dollar amount;

39           (2) under a formula by which a specific dollar amount can be  
 40           reasonably calculated by persons regulated or otherwise  
 41           affected by the rule; or

42           (3) as a range of potential dollar amounts, stating the factors



1 that the agency will utilize to set a specific dollar amount in an  
 2 individual case with sufficient certainty that a review of an  
 3 agency action under IC 4-21.5 or comparable process can  
 4 evaluate whether the amount was reasonable.

5 A rule concerning fines or civil penalties does not prohibit an  
 6 agency to enter into a settlement agreement with a person against  
 7 whom a fine or civil penalty is being assessed to determine the fine  
 8 or civil penalty to be paid for a violation.

9 (c) The amount of a fee must be reasonably based on the amount  
 10 necessary to carry out the purposes for which the fee is imposed.

11 (d) An agency setting a fine or civil penalty shall consider the  
 12 following:

13 (1) Whether the violation has a major or minor impact on the  
 14 health, safety, or welfare of a person, the health or safety of  
 15 animals or natural resources, or other facts set forth in the  
 16 agency's rule.

17 (2) The number of previous violations committed by the  
 18 offender of laws, rules, or programs administered by the  
 19 agency.

20 (3) The need for deterrence of future violations.

21 (4) Whether the conduct, if proved beyond a reasonable  
 22 doubt, would constitute a criminal offense, and the level of  
 23 penalty set by law for the criminal offense.

24 (e) An agency is not liable for a fee, fine, or civil penalty that is  
 25 not in conformity with this section if:

26 (1) the fee, fine, or civil penalty was included in a rule that  
 27 became effective before January 1, 2023, and that otherwise  
 28 complies with subsection (b);

29 (2) the fee, fine, or civil penalty was:

30 (A) set by an agency before January 1, 2023;

31 (B) reviewed by the budget committee:

32 (i) in the case of the department of environmental  
 33 management, the boards listed in IC 13-14-9-1, the office  
 34 of environmental adjudication, the natural resources  
 35 commission, the department of natural resources, the  
 36 Indiana gaming commission, and the Indiana horse  
 37 racing commission, before December 31, 2023; and

38 (ii) in the case of an agency not described in item (i),  
 39 before July 1, 2024; and

40 (C) included in a rule that complies with this section and  
 41 becomes effective before:

42 (i) in the case of the department of environmental



- 1 management, the boards listed in IC 13-14-9-1, the office
- 2 of environmental adjudication, the natural resources
- 3 commission, the department of natural resources, the
- 4 Indiana gaming commission, and the Indiana horse
- 5 racing commission, December 31, 2024; and
- 6 (ii) in the case of an agency not described in item (i), July
- 7 1, 2025; or
- 8 (3) the agency withdraws or otherwise ceases to enforce or
- 9 apply the fee, fine, or civil penalty before:
  - 10 (A) in the case of the department of environmental
  - 11 management, the boards listed in IC 13-14-9-1, the office
  - 12 of environmental adjudication, the natural resources
  - 13 commission, the department of natural resources, the
  - 14 Indiana gaming commission, and the Indiana horse racing
  - 15 commission, December 31, 2023; and
  - 16 (B) in the case of an agency not described in item (i), July
  - 17 1, 2024.

18 **Readoption without changes under IC 4-22-2.6 of a nonconforming**  
 19 **fee, fine, or civil penalty that meets the requirements of subdivision**  
 20 **(1) or (2) does not invalidate the nonconforming fee, fine, or civil**  
 21 **penalty.**

22 (f) Beginning January 1, 2024, an agency shall post on its  
 23 website a schedule of fines and civil penalties that apply to  
 24 violations of laws, rules, and requirements of federal programs  
 25 administered by the agency.

26 SECTION 13. IC 4-22-2-21, AS AMENDED BY P.L.204-2016,  
 27 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 28 JULY 1, 2023]: Sec. 21. (a) If incorporation of the text in full would be  
 29 cumbersome, expensive, or otherwise inexpedient, an agency may  
 30 incorporate by reference into a rule part or all of any of the following  
 31 matters:

- 32 (1) A federal or state statute, rule, or regulation.
- 33 (2) A code, manual, or other standard adopted by an agent of the
- 34 United States, a state, or a nationally recognized organization or
- 35 association.
- 36 (3) A manual of the department of local government finance
- 37 adopted in a rule described in IC 6-1.1-31-9.
- 38 (4) The following requirements:
  - 39 (A) The schedule, electronic formatting, and standard data,
  - 40 field, and record coding requirements for:
    - 41 (i) the electronic data file under IC 6-1.1-4-25 concerning
    - 42 the parcel characteristics and parcel assessments of all



- 1 parcels and personal property return characteristics and  
 2 assessments; and  
 3 (ii) the electronic data file under IC 36-2-9-20 concerning  
 4 the tax duplicate.
- 5 (B) The schedule, electronic formatting, and standard data,  
 6 field, and record coding requirements for data required to be  
 7 submitted under IC 6-1.1-5.5-3 or IC 6-1.1-11-8.
- 8 (C) Data export and transmission format requirements for  
 9 information described in clauses (A) and (B).
- 10 (b) Each matter incorporated by reference under subsection (a) must  
 11 be fully and exactly described.
- 12 (c) An agency may refer to a matter that is directly or indirectly  
 13 referred to in a primary matter by fully and exactly describing the  
 14 primary matter.
- 15 (d) **Except as otherwise provided in this article**, whenever an  
 16 agency submits a rule to the attorney general, the governor, or the  
 17 publisher under this chapter, the agency shall also submit a copy of the  
 18 full text of each matter incorporated by reference under subsection (a)  
 19 into the rule, other than the following:
- 20 (1) An Indiana statute or rule.  
 21 (2) A form or instructions for a form numbered by the Indiana  
 22 archives and record administration under IC 5-15-5.1-6.  
 23 (3) The source of a statement that is quoted or paraphrased in full  
 24 in the rule.  
 25 (4) Any matter that has been previously filed with the:  
 26 (A) secretary of state before July 1, 2006; or  
 27 (B) publisher after June 30, 2006.  
 28 (5) Any matter referred to in subsection (c) as a matter that is  
 29 directly or indirectly referred to in a primary matter.
- 30 (e) An agency may comply with subsection (d) by submitting a  
 31 paper or an electronic copy of the full text of the matter incorporated  
 32 by reference.
- 33 SECTION 14. IC 4-22-2-22.5, AS AMENDED BY P.L.72-2014,  
 34 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 35 JULY 1, 2023]: Sec. 22.5. (a) This section applies to a rule that an  
 36 agency intends to:
- 37 (1) adopt under sections ~~24~~ 23 through 36 of this chapter or  
 38 section 37.2 of this chapter;  
 39 (2) adopt under IC 13-14-9; or  
 40 (3) readopt under IC 4-22-2.6.
- 41 (b) As used in this section, "pending rulemaking action" means any  
 42 rulemaking action in which:



- 1 (1) either:
- 2 (A) a notice of ~~intent~~ **a public comment period** has been
- 3 published under section 23 **or 37.2** of this chapter; ~~or~~
- 4 (B) a rulemaking action has been commenced under
- 5 IC 13-14-9; ~~and or~~
- 6 **(C) a rulemaking action has been commenced under**
- 7 **IC 4-22-2.6; and**
- 8 (2) the rule has not become effective under section 36 of this
- 9 chapter.
- 10 (c) Each agency shall maintain a current rulemaking docket that is
- 11 indexed.
- 12 (d) A current rulemaking docket must list each pending rulemaking
- 13 action. The docket must state or contain:
- 14 (1) the subject matter of the proposed rule;
- 15 (2) notices related to the proposed rule, or links to the Indiana
- 16 Register where these notices may be viewed;
- 17 (3) how comments may be made;
- 18 (4) the time within which comments may be made;
- 19 (5) where comments and the agency's written response to those
- 20 comments may be inspected;
- 21 (6) the date, time, and place where a public hearing required
- 22 under:
- 23 (A) section 26 of this chapter; or
- 24 (B) IC 13-14-9;
- 25 will be held;
- 26 (7) a description of relevant scientific and technical findings
- 27 related to the proposed rule, if applicable; and
- 28 (8) a reasonable estimate of the timetable for action, updated
- 29 periodically as circumstances change, if necessary.
- 30 (e) The agency shall maintain the rulemaking docket on the agency's
- 31 ~~Internet web site.~~ **website.** The information must be in an open format
- 32 that can be easily searched and downloaded. Access to the docket shall,
- 33 to the extent feasible and permitted by law, provide an opportunity for
- 34 public comment on the pertinent parts of the rulemaking docket,
- 35 including relevant scientific and technical findings. Upon request, the
- 36 agency shall provide a written rulemaking docket.
- 37 SECTION 15. IC 4-22-2-22.7 IS ADDED TO THE INDIANA
- 38 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
- 39 **[EFFECTIVE JULY 1, 2023]: Sec. 22.7. (a) Before complying with**
- 40 **section 22.8 of this chapter, an agency shall conduct a regulatory**
- 41 **analysis for the proposed rule that complies with the requirements**
- 42 **of this section.**



1           **(b) The office of management and budget shall set standards for**  
 2 **the criteria, analytical method, treatment technology, economic,**  
 3 **fiscal, and other background data to be used by an agency in the**  
 4 **regulatory analysis. The regulatory analysis must be submitted in**  
 5 **a form that can be easily loaded into commonly used business**  
 6 **analysis software and published in the Indiana Register using the**  
 7 **format jointly developed by the publisher, the office of**  
 8 **management and budget, and the budget agency. The office of**  
 9 **management and budget may provide more stringent requirements**  
 10 **for rules with fiscal impacts and costs above a threshold amount**  
 11 **determined by the office of management and budget.**

12           **(c) At a minimum, the regulatory analysis must include findings**  
 13 **and any supporting data, studies, or analyses prepared for a rule**  
 14 **that demonstrate compliance with the following:**

15           **(1) The cost benefit requirements in IC 4-3-22-13.**

16           **(2) Each of the standards in sections 19.5 and (if applicable)**  
 17 **19.6 of this chapter.**

18           **(3) If applicable, the requirements for fees, fines, and civil**  
 19 **penalties in section 19.6 of this chapter.**

20           **(4) The annual economic impact on small businesses statement**  
 21 **required under IC 4-22-2.1-5.**

22           **(5) If applicable, the information required under**  
 23 **IC 13-14-9-4.**

24           **(6) Any requirement under any other law to conduct an**  
 25 **analysis of the cost, benefits, economic impact, or fiscal**  
 26 **impact of a rule, if applicable.**

27           **(d) The regulatory analysis must include a statement justifying**  
 28 **any requirement or cost that is:**

29           **(1) imposed on a regulated entity under the rule; and**

30           **(2) not expressly required by:**

31                   **(A) the statute authorizing the agency to adopt the rule; or**

32                   **(B) any other state or federal law.**

33           **The statement required under this subsection must include a**  
 34 **reference to any data, studies, or analyses relied upon by the**  
 35 **agency in determining that the imposition of the requirement or**  
 36 **cost is necessary.**

37           **(e) If an agency has made a good faith effort to comply with this**  
 38 **section, a rule is not invalid solely because the regulatory analysis**  
 39 **for the proposed rule is insufficient or inaccurate.**

40           **SECTION 16. IC 4-22-2-22.8 IS ADDED TO THE INDIANA**  
 41 **CODE AS A NEW SECTION TO READ AS FOLLOWS**  
 42 **[EFFECTIVE JULY 1, 2023]: Sec. 22.8. (a) After conducting a**



1 regulatory analysis under section 22.7 of this chapter, if an agency  
2 elects to adopt a rule subject to section 23 of this chapter or  
3 IC 13-14-9, the agency shall submit a request to the budget agency  
4 and the office of management and budget to authorize  
5 commencement of the public comment periods under this chapter  
6 or IC 13-14-9 (as applicable). The request must include the  
7 following:

8 (1) A general description of the subject matter of the proposed  
9 rule.

10 (2) The full text of the proposed rule (including a copy of any  
11 matter incorporated by reference under section 21 of this  
12 chapter) in the form required by the publisher, including  
13 citations to any related authorizing and affected Indiana  
14 statutes.

15 (3) The analysis, including supporting data, prepared under  
16 section 22.7 of this chapter.

17 (4) Any other information required by the office of  
18 management and budget.

19 (b) The budget agency and the office of management and budget  
20 shall expedite the review of the request to adopt a rule. The budget  
21 agency and the office of management and budget may do the  
22 following:

23 (1) Return the request to the agency with a statement  
24 describing any additional information needed to authorize or  
25 disapprove further rulemaking actions on one (1) or more of  
26 the rules in the request.

27 (2) Authorize the commencement of the public comment  
28 periods on one (1) or more of the rules in the request with or  
29 without changes.

30 (3) Disapprove commencement of the public comment periods  
31 on one (1) or more of the rules with a statement of reasons for  
32 the disapproval.

33 (c) If an agency has requested authorization for more than one  
34 (1) rule in the same request, the budget agency and the office of  
35 management and budget may make separate determinations with  
36 respect to some or all of the rules in the request. Approval of a  
37 request shall be treated as a determination that the review  
38 conducted and findings made by the agency comply with the  
39 requirements of section 22.7 of this chapter and this section. The  
40 budget agency and the office of management and budget may not  
41 approve any part of a proposed rule that adds or amends language  
42 to increase or expand application of a fee, fine, or civil penalty or





1 a schedule of fees, fines, or civil penalties before submitting the  
2 proposed rule to the budget committee for review.

3 (d) Notice of the determination shall be provided to the agency  
4 in an electronic format required by the publisher. The budget  
5 agency and the office of management and budget may return to the  
6 agency any copy of a matter incorporated by reference under  
7 section 21 of this chapter that was submitted with the request.

8 (e) If an agency revises a proposed rule after the budget agency  
9 and the office of management and budget authorize  
10 commencement of the public comment periods, the agency must  
11 obtain a new notice of determination under subsection (d). The  
12 agency shall resubmit to the budget agency and the office of  
13 management and budget the revised proposed rule and a revised  
14 regulatory analysis with sufficient information for the budget  
15 agency and the office of management and budget to determine the  
16 impact the revisions have on the regulatory analysis previously  
17 reviewed by the budget agency and the office of management and  
18 budget. After obtaining a new notice of determination, the agency  
19 shall submit to the publisher the new notice of determination, the  
20 revised proposed rule, and the revised regulatory analysis.

21 SECTION 17. IC 4-22-2-23, AS AMENDED BY P.L.152-2012,  
22 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
23 JULY 1, 2023]: Sec. 23. (a) This section does not apply to rules  
24 adopted under IC 4-22-2-37.1.

25 (b) (a) At least twenty-eight (28) days before an agency notifies the  
26 public of the agency's intention to adopt a rule under section 24 of this  
27 chapter, the agency shall notify the public of its intention to adopt a  
28 rule by publishing a notice of intent to adopt a rule in the Indiana  
29 Register. An agency shall provide notice in the Indiana Register of  
30 the first public comment period required by this section. To  
31 publish notice of the first comment period in the Indiana Register,  
32 the agency must submit the following to the publisher:

33 (1) A statement of the date, time, and place at which the  
34 hearing required by section 26 of this chapter will be  
35 convened, including information for how to attend the public  
36 hearing remotely.

37 (2) The full text of the agency's proposed rule in the form  
38 required by section 20 of this chapter and the documents  
39 required by section 21 of this chapter.

40 (3) The latest version of the regulatory analysis submitted to  
41 the budget agency and the office of management and budget  
42 under section 22.8 of this chapter.



- 1           **(4) The determination of the budget agency and the office of**
- 2           **management and budget authorizing commencement of the**
- 3           **public comment periods.**
- 4           **(5) If the proposed rule adds or amends language to increase**
- 5           **or expand application of a fee, fine, or civil penalty or a**
- 6           **schedule of fees, fines, or civil penalties, the agenda of the**
- 7           **budget committee meeting at which the rule was scheduled for**
- 8           **review.**
- 9           **(6) The notice required under subsection (b).**
- 10          **(b) The publication notice of the first comment period must**
- 11          **include the following:**
- 12           **(1) A general description of the subject matter of the proposed**
- 13           **rule.**
- 14           **(2) An overview of the intent and scope of the proposed rule and**
- 15           **the statutory authority for the rule.**
- 16           **(3) The latest version of the regulatory analysis submitted to**
- 17           **the budget agency and the office of management and budget**
- 18           **under section 22.8 of this chapter, excluding any appendices**
- 19           **containing any data, studies, or analysis referenced in the**
- 20           **regulatory analysis.**
- 21           **(4) Information concerning where, when, and how a person**
- 22           **may submit written comments on the proposed rule, including**
- 23           **contact information concerning the small business regulatory**
- 24           **coordinator required by section 28.1 of this chapter.**
- 25           **(5) Information concerning where, when, and how a person**
- 26           **may inspect and copy the regulatory analysis, and any data,**
- 27           **studies, or analyses referenced under subdivision (3).**
- 28           **(6) Information concerning where, when, and how a person**
- 29           **may inspect any documents incorporated by reference into**
- 30           **the proposed rule under section 21 of this chapter.**
- 31           **(7) An indication that, if the agency does not receive any**
- 32           **substantive comments during the comment period or public**
- 33           **hearing, the agency may adopt a rule that is the same as or**
- 34           **does not substantially differ from the text of the proposed rule**
- 35           **published under this section.**
- 36          **Inadequacy or insufficiency of the published description or**
- 37          **regulatory analysis published under this section does not invalidate**
- 38          **a rulemaking action.**
- 39           **(c) The requirement to publish a notice of intent to adopt a rule**
- 40           **under subsection (b) does not apply to rulemaking under IC 13-14-9.**
- 41           **(d) In addition to the procedures required by this article, an agency**
- 42           **may solicit comments from the public on the need for a rule; the**



1 drafting of a rule; or any other subject related to a rulemaking action;  
 2 including members of the public who are likely to be affected because  
 3 they are the subject of the potential rulemaking or are likely to benefit  
 4 from the potential rulemaking. The procedures that the agency may use  
 5 include the holding of conferences and the inviting of written  
 6 suggestions, facts, arguments, or views.

7 (e) The agency shall prepare a written response that contains a  
 8 summary of the comments received during any part of the rulemaking  
 9 process. The written response is a public document. The agency shall  
 10 make the written response available to interested parties upon request.

11 (c) **Although the agency may comply with the publication**  
 12 **requirements of this section on different days, the agency must**  
 13 **comply with all of the publication requirements of this section at**  
 14 **least thirty (30) days before the public hearing required by section**  
 15 **26 of this chapter is convened.**

16 (d) **The publisher shall review materials submitted under this**  
 17 **section and determine the date that the publisher intends to publish**  
 18 **the text of the proposed rule and the notice in the Indiana Register.**  
 19 **If the submitted material complies with this section, the publisher**  
 20 **shall establish the intended publication date, assign a document**  
 21 **control number to the proposed rule, and provide a written or an**  
 22 **electronic mail authorization to proceed to the agency. The**  
 23 **publisher shall publish the following in the Indiana Register on the**  
 24 **intended publication date:**

25 (1) **The notice of the first comment period, including any**  
 26 **information required under IC 13-14-9-4 (if applicable).**

27 (2) **The full text of the agency's proposed rule (excluding the**  
 28 **full text of a matter incorporated by reference under section**  
 29 **21 of this chapter).**

30 SECTION 18. IC 4-22-2-23.1, AS AMENDED BY P.L.123-2006,  
 31 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 32 JULY 1, 2023]: Sec. 23.1. (a) ~~This section and section 19(b) of this~~  
 33 ~~chapter do not apply to rules adopted under IC 4-22-2-37.1.~~

34 (b) ~~Before or after an agency notifies the public of its intention to~~  
 35 ~~adopt a rule under section 24 of this chapter, submits a request to the~~  
 36 ~~budget agency and the office of management and budget under~~  
 37 ~~section 22.8 of this chapter, the agency may solicit comments from all~~  
 38 ~~or any segment of the public on the need for a rule, the drafting of a~~  
 39 ~~rule, or any other subject related to a rulemaking action. The~~  
 40 ~~procedures that the agency may use include the holding of conferences~~  
 41 ~~and the inviting of written suggestions, facts, arguments, or views. An~~  
 42 ~~agency's failure to consider comments received under this section does~~



1 not invalidate a rule subsequently adopted.

2 SECTION 19. IC 4-22-2-24, AS AMENDED BY P.L.1-2006,  
3 SECTION 71, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 2023]: Sec. 24. (a) An agency shall notify the public of its  
5 intention to adopt a rule by complying with the publication  
6 requirements in subsections (b) and (c):

7 (b) The agency shall cause a notice of a public hearing to be  
8 published once in one (1) newspaper of general circulation in Marion  
9 County, Indiana. To publish the newspaper notice, the agency shall  
10 directly contract with the newspaper. An agency may not contract for  
11 the publication of a notice under this chapter until the agency has  
12 received a written or an electronic authorization to proceed from the  
13 publisher under subsection (g):

14 (a) If:

15 (1) an agency receives substantive comments during the first  
16 comment period or the public hearing under section 23 of this  
17 chapter; or

18 (2) the rule establishes a requirement or limitation that is  
19 more stringent than an applicable federal requirement or  
20 limitation;

21 the agency must conduct a second comment period under this  
22 section.

23 (c) (b) The agency shall cause a notice of public hearing and To  
24 publish a notice of the second comment period in the Indiana  
25 Register, the agency must submit the following to the publisher:

26 (1) The full text of the agency's proposed rule (excluding the full  
27 text of a matter incorporated by reference under section 21 of this  
28 chapter) to be published once in the Indiana Register. To publish  
29 the notice and proposed rule in the Indiana Register, the agency  
30 shall submit the text to the publisher in accordance with  
31 subsection (g): The agency shall submit the rule in the form  
32 required by section 20 of this chapter. and with **The agency also**  
33 **shall submit** the documents required by section 21 of this chapter  
34 **(if the agency has not previously provided the publisher with**  
35 **the documents)**. The publisher shall determine the number of  
36 copies of the rule and other documents to be submitted under this  
37 subsection. **subdivision.**

38 (2) **The notice required under subsection (c).**

39 (d) (c) The agency shall include the following in the **second**  
40 **comment period** notice required by subsections (b) and (c): **published**  
41 **in the Indiana Register:**

42 (1) A statement of the date, time, and place at which the public



1 hearing required by section 26 of this chapter will be convened,  
 2 **including information for how to attend the hearing remotely.**

3 (2) A general description of the subject matter of the proposed  
 4 rule.

5 (3) In a notice published after June 30, 2005, a statement  
 6 justifying any requirement or cost that is:

7 (A) imposed on a regulated entity under the rule; and

8 (B) not expressly required by:

9 (i) the statute authorizing the agency to adopt the rule; or

10 (ii) any other state or federal law.

11 The statement required under this subdivision must include a  
 12 reference to any data, studies, or analyses relied upon by the  
 13 agency in determining that the imposition of the requirement or  
 14 cost is necessary.

15 (4) an explanation that:

16 (A) the proposed rule; and

17 (B) any data, studies, or analysis referenced in a statement  
 18 under subdivision (3);

19 may be inspected and copied at the office of the agency.

20 (3) A summary of the written comments received by the  
 21 agency during the first comment period and a summary of the  
 22 response of the agency to written comments submitted under  
 23 section 23 of this chapter during the first public comment  
 24 period.

25 (4) Either a statement indicating that no changes in the  
 26 regulatory analysis have been made from the version of the  
 27 regulatory analysis published under section 23 of this chapter  
 28 or the latest version of the regulatory analysis (excluding any  
 29 appendices containing any data, studies, or analysis  
 30 referenced in the regulatory analysis) submitted to the budget  
 31 agency and the office of management and budget under  
 32 section 22.8 of this chapter, if any changes have been made in  
 33 the regulatory analysis after submitting the material to the  
 34 publisher under section 23 of this chapter.

35 (5) An explanation of any differences between the text of the  
 36 proposed rule published for the first comment period under  
 37 section 23 of this chapter and the text of the proposed rule  
 38 published for the second comment period under this section.

39 (6) Information concerning where, when, and how a person  
 40 may submit written comments on the proposed rule, including  
 41 contact information concerning the small business regulatory  
 42 coordinator required by section 28.1 of this chapter.



1 (7) Information concerning where, when, and how a person  
 2 may inspect and copy the regulatory analysis and any data,  
 3 studies, or analyses referenced in a regulatory analysis  
 4 referenced in subdivision (4).

5 (8) Information concerning where, when, and how a person  
 6 may inspect any documents incorporated by reference into  
 7 the proposed rule under section 21 of this chapter.

8 (9) An indication that the notice is for the second of two (2)  
 9 thirty (30) day periods in which the public may comment on  
 10 the proposed rule and that following the second comment  
 11 period the agency may adopt a version of the proposed rule  
 12 that is the same as or does not substantially differ from the  
 13 text of the proposed rule published under this section.

14 However, Inadequacy or insufficiency of the subject matter description  
 15 under subdivision (2) or a statement of justification under subdivision  
 16 (3) or regulatory analysis in a notice published under this section  
 17 does not invalidate a rulemaking action.

18 (e) (d) Although the agency may comply with the publication  
 19 requirements in this section on different days, the agency must comply  
 20 with all of the publication requirements in this section at least  
 21 twenty-one (21) thirty (30) days before the public hearing required by  
 22 section 26 of this chapter is convened.

23 (f) This section does not apply to the solicitation of comments under  
 24 section 23 of this chapter.

25 (g) (e) The publisher shall review materials submitted under this  
 26 section and determine the date that the publisher intends to include the  
 27 material in the Indiana Register. After:

28 (1) establishing the intended publication date; and

29 (2) receiving the public hearing information specified in  
 30 subsection (d) from the agency;

31 the publisher shall If the submitted material complies with this  
 32 section, the publisher shall establish the intended publication date,  
 33 assign a document control number to the proposed rule, and  
 34 provide a written or an electronic mail authorization to proceed to the  
 35 agency. The publisher shall publish the following in the Indiana  
 36 Register on the intended publication date:

37 (1) The notice of the second comment period, including any  
 38 information required under IC 13-14-9-4 (if applicable).

39 (2) The full text of the agency's proposed rule (excluding the  
 40 full text of a matter incorporated by reference under section  
 41 21 of this chapter).

42 SECTION 20. IC 4-22-2-25, AS AMENDED BY P.L.5-2015,



1 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 2 JULY 1, 2023]: Sec. 25. (a) An agency has one (1) year from the date  
 3 that it publishes a notice of ~~intent to adopt a rule~~ in the Indiana Register  
 4 ~~under section 23 of this chapter to comply with sections 26 through 33~~  
 5 ~~of this chapter of the first public comment period under section 23~~  
 6 ~~of this chapter to comply with sections 23 through 33 of this~~  
 7 ~~chapter~~ and obtain the approval or deemed approval of the governor.  
 8 If an agency determines that a rule cannot be adopted within one (1)  
 9 year after the publication of the notice of ~~intent to adopt a rule~~ **the first**  
 10 **public comment period** under section 23 of this chapter, the agency  
 11 shall, before the two hundred fiftieth day following the publication of  
 12 the notice of ~~intent to adopt a rule~~ **the first public comment period**  
 13 under section 23 of this chapter, notify the publisher by electronic  
 14 means:

15 (1) the reasons why the rule was not adopted and the expected  
 16 date the rule will be completed; and

17 (2) the expected date the rule will be approved or deemed  
 18 approved by the governor or withdrawn under section 41 of this  
 19 chapter.

20 (b) If a rule is not approved before the later of:

21 (1) one (1) year after the agency publishes notice of ~~intent to~~  
 22 ~~adopt the rule~~ **the first public comment period** under section 23  
 23 of this chapter; or

24 (2) the expected date contained in a notice concerning the rule  
 25 that is provided to the publisher under subsection (a);

26 a later approval or deemed approval is ineffective, and the rule may  
 27 become effective only through another rulemaking action initiated  
 28 under this chapter.

29 SECTION 21. IC 4-22-2-26 IS AMENDED TO READ AS  
 30 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 26. (a) After the notices  
 31 and the text of an agency's proposed rule are published under ~~section~~  
 32 **sections 23 and (if applicable) 24** of this chapter, the agency shall  
 33 conduct a public hearing on the proposed rule.

34 (b) The agency shall convene the public hearing on the date and at  
 35 the time and place stated in its notices **and include an option for**  
 36 **remote attendance.**

37 (c) The agency may conduct the public hearing in any informal  
 38 manner that allows for an orderly presentation of comments and avoids  
 39 undue repetition. However, the agency shall afford any person  
 40 attending the public hearing an adequate opportunity to comment on  
 41 the agency's proposed rule through the presentation of oral and written  
 42 facts or argument.



1 (d) The agency may recess the public hearing and reconvene it on  
2 a different date or at a different time or place by:

3 (1) announcing the date, time, and place of the reconvened public  
4 hearing in the original public hearing before its recess; and

5 (2) recording the announcement in the agency's record of the  
6 public hearing.

7 (e) An agency that complies with subsection (d) is not required to  
8 give any further notice of a public hearing that is to be reconvened.

9 SECTION 22. IC 4-22-2-27 IS AMENDED TO READ AS  
10 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 27. The individual or  
11 group of individuals who will finally adopt the rule under section 29 of  
12 this chapter shall fully consider comments received **by the agency**  
13 **during each comment period and comments received** at the public  
14 **hearing hearings** required by ~~section~~ **sections 23, 24, and 26** of this  
15 chapter and may consider any other information before adopting the  
16 rule. Attendance at the public hearing or review of a written record or  
17 summary of the public hearing is sufficient to constitute full  
18 consideration.

19 SECTION 23. IC 4-22-2-27.5 IS ADDED TO THE INDIANA  
20 CODE AS A NEW SECTION TO READ AS FOLLOWS  
21 [EFFECTIVE JULY 1, 2023]: **Sec. 27.5. In addition to the**  
22 **information submitted to the attorney general under section 31 of**  
23 **this chapter, to the governor under section 33 of this chapter, and**  
24 **to the publisher under section 35 of this chapter, an agency shall**  
25 **submit to the attorney general, the governor, and the publisher a**  
26 **summary of the comments received by the agency during each**  
27 **comment period and public hearing under sections 23, 24, and 26**  
28 **of this chapter or IC 13-14-9 and a summary of the response of the**  
29 **agency to the comments. The publisher shall publish the**  
30 **summaries with the final adopted and approved rule.**

31 SECTION 24. IC 4-22-2-28, AS AMENDED BY P.L.237-2017,  
32 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
33 JULY 1, 2023]: Sec. 28. (a) The following definitions apply throughout  
34 this section:

35 (1) "Ombudsman" refers to the small business ombudsman  
36 designated under IC 5-28-17-6.

37 (2) "Total estimated economic impact" means the direct annual  
38 economic impact of a rule on all regulated persons after the rule  
39 is fully implemented under subsection (g).

40 (b) The ombudsman:

41 (1) shall review a proposed rule that

42 (A) imposes requirements or costs on small businesses (as





1 defined in IC 4-22-2.1-4); and  
 2 (B) is referred to the ombudsman by an agency under  
 3 IC 4-22-2.1-5(e); and  
 4 (2) may review a proposed rule that imposes requirements or  
 5 costs on businesses other than small businesses (as defined in  
 6 IC 4-22-2.1-4).

7 After conducting a review under subdivision (1) or (2), the ombudsman  
 8 may suggest alternatives to reduce any regulatory burden that the  
 9 proposed rule imposes on small businesses or other businesses. The  
 10 agency that intends to adopt the proposed rule shall respond in writing  
 11 to the ombudsman concerning the ombudsman's comments or  
 12 suggested alternatives before adopting the proposed rule under section  
 13 29 of this chapter.

14 (c) Subject to subsection (e) and not later than fifty (50) days before  
 15 the public hearing for a proposed rule required by section 26 of this  
 16 chapter, an agency shall submit the proposed rule to the office of  
 17 management and budget for a review under subsection (d); if the  
 18 agency proposing the rule determines that the rule will have a total  
 19 estimated economic impact greater than five hundred thousand dollars  
 20 (\$500,000) on all regulated persons. In determining the total estimated  
 21 economic impact under this subsection, the agency shall consider any  
 22 applicable information submitted by the regulated persons affected by  
 23 the rule. To assist the office of management and budget in preparing  
 24 the fiscal impact statement required by subsection (d), the agency shall  
 25 submit, along with the proposed rule, the data used and assumptions  
 26 made by the agency in determining the total estimated economic  
 27 impact of the rule.

28 (d) Except as provided in subsection (c), before the adoption of the  
 29 rule, and not more than forty-five (45) days after receiving a proposed  
 30 rule under subsection (c), the office of management and budget shall  
 31 prepare, using the data and assumptions provided by the agency  
 32 proposing the rule, along with any other data or information available  
 33 to the office of management and budget, a fiscal impact statement  
 34 concerning the effect that compliance with the proposed rule will have  
 35 on:

- 36 (1) the state; and  
 37 (2) all persons regulated by the proposed rule.

38 The fiscal impact statement must contain the total estimated economic  
 39 impact of the proposed rule and a determination concerning the extent  
 40 to which the proposed rule creates an unfunded mandate on a state  
 41 agency or political subdivision. The fiscal impact statement is a public  
 42 document. The office of management and budget shall make the fiscal



1 impact statement available to interested parties upon request and to the  
 2 agency proposing the rule. The agency proposing the rule shall  
 3 consider the fiscal impact statement as part of the rulemaking process  
 4 and shall provide the office of management and budget with the  
 5 information necessary to prepare the fiscal impact statement, including  
 6 any economic impact statement prepared by the agency under  
 7 IC 4-22-2.1-5. The office of management and budget may also receive  
 8 and consider applicable information from the regulated persons  
 9 affected by the rule in preparation of the fiscal impact statement.

10 (e) With respect to a proposed rule subject to IC 13-14-9:

11 (1) the department of environmental management shall give  
 12 written notice to the office of management and budget of the  
 13 proposed date of preliminary adoption of the proposed rule not  
 14 less than sixty-six (66) days before that date; and

15 (2) the office of management and budget shall prepare the fiscal  
 16 impact statement referred to in subsection (d) not later than  
 17 twenty-one (21) days before the proposed date of preliminary  
 18 adoption of the proposed rule.

19 (f) In determining whether a proposed rule has a total estimated  
 20 economic impact greater than five hundred thousand dollars  
 21 (\$500,000), the agency proposing the rule shall consider the impact of  
 22 the rule on any regulated person that already complies with the  
 23 standards imposed by the rule on a voluntary basis.

24 (g) For purposes of this section, a rule is fully implemented after:

25 (1) the conclusion of any phase-in period during which:

26 (A) the rule is gradually made to apply to certain regulated  
 27 persons; or

28 (B) the costs of the rule are gradually implemented; and

29 (2) the rule applies to all regulated persons that will be affected  
 30 by the rule.

31 In determining the total estimated economic impact of a proposed rule  
 32 under this section, the agency proposing the rule shall consider the  
 33 annual economic impact on all regulated persons beginning with the  
 34 first twelve (12) month period after the rule is fully implemented. The  
 35 agency may use actual or forecasted data and may consider the actual  
 36 and anticipated effects of inflation and deflation. The agency shall  
 37 describe any assumptions made and any data used in determining the  
 38 total estimated economic impact of a rule under this section.

39 (h) An agency shall provide the legislative council in an electronic  
 40 format under IC 5-14-6 with any analysis, data, and description of  
 41 assumptions submitted to the office of management and budget under  
 42 this section or section 40 of this chapter at the same time the agency



1 submits the information to the office of management and budget. The  
 2 office of management and budget shall provide the legislative council  
 3 in an electronic format under IC 5-14-6 any fiscal impact statement and  
 4 related supporting documentation prepared by the office of  
 5 management and budget under this section or section 40 of this chapter  
 6 at the same time the office of management and budget provides the  
 7 fiscal impact statement to the agency proposing the rule. Information  
 8 submitted under this subsection must identify the rule to which the  
 9 information is related by document control number assigned by the  
 10 publisher.

11 (i) An agency shall provide the legislative council in an electronic  
 12 format under IC 5-14-6 with any economic impact or fiscal impact  
 13 statement, including any supporting data, studies, or analysis, prepared  
 14 for a rule proposed by the agency or subject to readoption by the  
 15 agency to comply with:

16 (1) a requirement in section 19.5 of this chapter to minimize the  
 17 expenses to regulated entities that are required to comply with the  
 18 rule;

19 (2) a requirement in section 24 of this chapter to publish a  
 20 justification of any requirement or cost that is imposed on a  
 21 regulated entity under the rule;

22 (3) a requirement in IC 4-22-2.1-5 to prepare a statement that  
 23 describes the annual economic impact of a rule on all small  
 24 businesses after the rule is fully implemented;

25 (4) a requirement in IC 4-22-2.5-3.1 to conduct a review to  
 26 consider whether there are any alternative methods of achieving  
 27 the purpose of the rule that are less costly or less intrusive, or that  
 28 would otherwise minimize the economic impact of the proposed  
 29 rule on small businesses;

30 (5) a requirement in IC 13-14-9-3 or IC 13-14-9-4 to publish  
 31 information concerning the fiscal impact of a rule or alternatives  
 32 to a rule subject to these provisions; or

33 (6) a requirement under any other law to conduct an analysis of  
 34 the cost, economic impact, or fiscal impact of a rule;

35 regardless of whether the total estimated economic impact of the  
 36 proposed rule is more than five hundred thousand dollars (\$500,000);  
 37 as soon as practicable after the information is prepared. Information  
 38 submitted under this subsection must identify the rule to which the  
 39 information is related by document control number assigned by the  
 40 publisher.

41 SECTION 25. IC 4-22-2-28.1, AS AMENDED BY P.L.237-2017,  
 42 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

EH 1623—LS 7025/DI 125



1 JULY 1, 2023]: Sec. 28.1. (a) This section applies to the following:  
 2 (1) A rule for which the notice required by section 23 of this  
 3 chapter or by IC 13-14-9-3 is published by an agency or the board  
 4 (as defined in IC 13-13-8-1);  
 5 (2) A rule for which:  
 6 (A) the notice required by IC 13-14-9-3; or  
 7 (B) an appropriate later notice for circumstances described in  
 8 subsection (g);  
 9 is published by the department of environmental management  
 10 after June 30, 2006.  
 11 (b) (a) As used in this section, **The following definitions apply**  
 12 **throughout this section:**  
 13 (1) "Coordinator" refers to the small business regulatory  
 14 coordinator assigned to a rule by an agency under subsection (e);  
 15 (b).  
 16 (c) As used in this section, (2) "Director" refers to the director or  
 17 other administrative head of an agency.  
 18 (d) As used in this section, (3) "Small business" has the meaning set  
 19 forth in IC 5-28-2-6.  
 20 (e) (b) For each rulemaking action and rule finally adopted as a  
 21 result of a rulemaking action by an agency, ~~under this chapter,~~ the  
 22 agency shall assign one (1) staff person to serve as the agency's small  
 23 business regulatory coordinator with respect to the proposed or adopted  
 24 rule. The agency shall assign a staff person to a rule under this  
 25 subsection based on the person's knowledge of, or experience with, the  
 26 subject matter of the rule. A staff person may serve as the coordinator  
 27 for more than one (1) rule proposed or adopted by the agency if the  
 28 person is qualified by knowledge or experience with respect to each  
 29 rule. Subject to subsection (f):  
 30 (1) in the case of a proposed rule; the notice of intent to adopt the  
 31 **rule The first comment period notice** published under section 23  
 32 of this chapter or  
 33 (2) in the case of a rule proposed by the department of  
 34 environmental management or the board (as defined in  
 35 IC 13-13-8-1); the notice published under IC 13-14-9-3 or the  
 36 findings published under IC 13-14-9-8(b)(1), whichever applies;  
 37 must include the name, address, telephone number, and electronic mail  
 38 address of the small business coordinator for the proposed rule, the  
 39 name, address, telephone number, and electronic mail address of the  
 40 small business ombudsman designated under IC 5-28-17-6, and a  
 41 statement of the resources available to regulated entities through the  
 42 small business ombudsman designated under IC 5-28-17-6. Subject to



1 subsection (f); In the case of a rule finally adopted, the final rule, as  
 2 published in the Indiana Register, must include the name, address,  
 3 telephone number, and electronic mail address of the coordinator.

4 (f) (c) This subsection applies to a rule adopted by the department  
 5 of environmental management or the board (as defined in  
 6 IC 13-13-8-1) under IC 13-14-9. Subject to subsection (g), listed in  
 7 **IC 13-14-9-1. In addition to the information required by subsection**  
 8 **(b), the department and a board** shall include in the notice provided  
 9 under IC 13-14-9-3 or in the findings published under  
 10 IC 13-14-9-8(b)(1), whichever applies, **section 23 of this chapter** and  
 11 in the publication of the final rule in the Indiana Register:

12 (1) a statement of the resources available to regulated entities  
 13 through the technical and compliance assistance program  
 14 established under IC 13-28-3;

15 (2) the name, address, telephone number, and electronic mail  
 16 address of the ombudsman designated under IC 13-28-3-2;

17 (3) if applicable, a statement of:

18 (A) the resources available to small businesses through the  
 19 small business stationary source technical assistance program  
 20 established under IC 13-28-5; and

21 (B) the name, address, telephone number, and electronic mail  
 22 address of the ombudsman for small business designated under  
 23 IC 13-28-5-2(3). and

24 (4) the information required by subsection (e).

25 The coordinator assigned to the rule under subsection (e) shall work  
 26 with the ombudsman described in subdivision (2) and the office of  
 27 voluntary compliance established by IC 13-28-1-1 to coordinate the  
 28 provision of services required under subsection (h) and IC 13-28-3. If  
 29 applicable, the coordinator assigned to the rule under subsection (e)  
 30 shall work with the ombudsman referred to in subdivision (3)(B) to  
 31 coordinate the provision of services required under subsection (h) **this**  
 32 **section** and IC 13-28-5.

33 (g) If the notice provided under IC 13-14-9-3 is not published as  
 34 allowed by IC 13-14-9-7, the department of environmental  
 35 management shall publish in the notice provided under IC 13-14-9-4  
 36 the information that subsection (f) would otherwise require to be  
 37 published in the notice under IC 13-14-9-3. If neither the notice under  
 38 IC 13-14-9-3 nor the notice under IC 13-14-9-4 is published as allowed  
 39 by IC 13-14-9-8, the department of environmental management shall  
 40 publish in the commissioner's written findings under IC 13-14-9-8(b)  
 41 the information that subsection (f) would otherwise require to be  
 42 published in the notice under IC 13-14-9-3.



1           ~~(h)~~ **(d)** The coordinator assigned to a rule ~~under subsection (e)~~ shall  
 2 serve as a liaison between the agency and any small business subject  
 3 to regulation under the rule. The coordinator shall provide guidance to  
 4 small businesses affected by the rule on the following:

5           (1) Any requirements imposed by the rule, including any  
 6 reporting, record keeping, or accounting requirements.

7           (2) How the agency determines or measures compliance with the  
 8 rule, including any deadlines for action by regulated entities.

9           (3) Any penalties, sanctions, or fines imposed for noncompliance  
 10 with the rule.

11           (4) Any other concerns of small businesses with respect to the  
 12 rule, including the agency's application or enforcement of the rule  
 13 in particular situations. However, in the case of a rule adopted  
 14 ~~under IC 13-14-9~~, **by the department of environmental**  
 15 **management or a board listed in IC 13-14-9-1**, the coordinator  
 16 assigned to the rule may refer a small business with concerns  
 17 about the application or enforcement of the rule in a particular  
 18 situation to the ombudsman designated under IC 13-28-3-2 or, if  
 19 applicable, under IC 13-28-5-2(3).

20           ~~(i)~~ **(e)** The coordinator assigned to a rule ~~under subsection (e)~~ shall  
 21 provide guidance under this section in response to questions and  
 22 concerns expressed by small businesses affected by the rule. The  
 23 coordinator may also issue general guidelines or informational  
 24 pamphlets to assist small businesses in complying with the rule. Any  
 25 guidelines or informational pamphlets issued under this subsection  
 26 shall be made available:

27           (1) for public inspection and copying at the offices of the agency  
 28 under IC 5-14-3; and

29           (2) electronically through electronic gateway access.

30           ~~(j)~~ **(f)** The coordinator assigned to a rule ~~under subsection (e)~~ shall  
 31 keep a record of all comments, questions, and complaints received  
 32 from small businesses with respect to the rule. The coordinator shall  
 33 deliver the record, along with any accompanying documents submitted  
 34 by small businesses, to the director:

35           (1) not later than ten (10) days after the date on which the rule is  
 36 submitted to the publisher under section 35 of this chapter; and

37           (2) before July 15 of each year during which the rule remains in  
 38 effect.

39 The coordinator and the director shall keep confidential any  
 40 information concerning a small business to the extent that the  
 41 information is exempt from public disclosure under IC 5-14-3-4.

42           ~~(k)~~ **(g)** Not later than November 1 of each year, the director shall:



- 1 (1) compile the records received from all of the agency's
- 2 coordinators under subsection ~~(j)~~; **(f)**;
- 3 (2) prepare a report that sets forth:
- 4 (A) the number of comments, complaints, and questions
- 5 received by the agency from small businesses during the most
- 6 recent state fiscal year, categorized by the subject matter of the
- 7 rules involved;
- 8 (B) the number of complaints or questions reported under
- 9 clause (A) that were resolved to the satisfaction of the agency
- 10 and the small businesses involved;
- 11 (C) the total number of staff serving as coordinators under this
- 12 section during the most recent state fiscal year;
- 13 (D) the agency's costs in complying with this section during
- 14 the most recent state fiscal year; and
- 15 (E) the projected budget required by the agency to comply
- 16 with this section during the current state fiscal year; and
- 17 (3) deliver the report to the legislative council in an electronic
- 18 format under IC 5-14-6 and to the small business ombudsman
- 19 designated under IC 5-28-17-6.

20 SECTION 26. IC 4-22-2-28.2, AS AMENDED BY P.L.133-2012,  
 21 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 22 JULY 1, 2023]: Sec. 28.2. (a) This section applies to a violation  
 23 described in subsection (c) that occurs after June 30, 2005. However,  
 24 in the case of a violation of a rule adopted under IC 13-14-9 by the  
 25 department of environmental management or the board (as defined in  
 26 IC 13-13-8-1), the procedures set forth in IC 13-30-4-3 and IC 13-30-7  
 27 apply instead of this section.

28 (b) As used in this section, "small business" has the meaning set  
 29 forth in section ~~28-1(d)~~ **28.1(a)** of this chapter.

30 (c) Except as provided in subsection (d), a small business that  
 31 voluntarily provides notice to an agency of the small business's actual  
 32 or potential violation of a rule adopted by the agency under this chapter  
 33 is immune from civil or criminal liability resulting from an agency  
 34 action relating to the violation if the small business does the following:

- 35 (1) Provides written notice of the violation to the agency not later
- 36 than forty-five (45) days after the small business knew or should
- 37 have known that the violation occurred.
- 38 (2) Corrects the violation within a time agreed to by the agency
- 39 and the small business. However, the small business shall be
- 40 given at least ninety (90) days after the date of the notice
- 41 described in subdivision (1) to correct the violation. The small
- 42 business may correct the violation at any time before the



1 expiration of the period agreed to under this subdivision.

2 (3) Cooperates with any reasonable request by the agency in any  
3 investigation initiated in response to the notice.

4 (d) A small business is not immune from civil or criminal liability  
5 relating to a violation of which the small business provides notice  
6 under subsection (c) if any of the following apply:

7 (1) The violation resulted in serious harm or in imminent and  
8 substantial endangerment to the public health, safety, or welfare.

9 (2) The violation resulted in a substantial economic benefit that  
10 afforded the small business a clear advantage over the small  
11 business's competitors.

12 (3) The small business has a pattern of continuous or repeated  
13 violations of the rule at issue or any other rules of the agency.

14 (e) Information that a small business provides under this section,  
15 including actions and documents that identify or describe the small  
16 business, to an agency in providing notice of the small business's actual  
17 or potential violation of a rule adopted by the agency is confidential,  
18 unless a clear and immediate danger to the public health, safety, or  
19 welfare or to the environment exists. Information described in this  
20 subsection may not be made available for use by the agency for  
21 purposes other than the purposes of this section without the consent of  
22 the small business.

23 (f) Voluntary notice of an actual or a potential violation of a rule  
24 that is provided by a small business under subsection (c) is not  
25 admissible as evidence in a proceeding, other than an agency  
26 proceeding, to prove liability for the rule violation or the effects of the  
27 rule violation.

28 SECTION 27. IC 4-22-2-29, AS AMENDED BY P.L.237-2017,  
29 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
30 JULY 1, 2023]: Sec. 29. (a) As used in this section, "small business  
31 ombudsman" refers to the small business ombudsman designated under  
32 IC 5-28-17-6.

33 (b) After an agency has complied with sections 26, 27, and 28 of  
34 this chapter, the agency may:

35 (1) adopt a rule that is identical to a proposed rule published in  
36 the Indiana Register under section **23 or (as applicable)** 24 of  
37 this chapter;

38 (2) subject to subsection (c), adopt a rule that consolidates part or  
39 all of two (2) or more proposed rules published in the Indiana  
40 Register under section **23 or (as applicable)** 24 of this chapter  
41 and considered under section 27 of this chapter;

42 (3) subject to subsection (c), adopt part of one (1) or more





1 proposed rules described in subdivision (2) in two (2) or more  
2 separate adoption actions; or

3 (4) subject to subsection (c), adopt a revised version of a proposed  
4 rule published under section **23 or (as applicable) 24** of this  
5 chapter and include provisions that did not appear in the  
6 published version, including any provisions recommended by the  
7 small business ombudsman under IC 4-22-2.1-6(a), if applicable.

8 (c) **Subject to IC 13-14-9-4.5 (if applicable)**, an agency may not  
9 adopt a rule that substantially differs from the version or versions of the  
10 proposed rule or rules published in the Indiana Register under section  
11 **23 or 24** of this chapter, **or IC 13-14-9-14 (as applicable)**, unless it is  
12 a logical outgrowth of any proposed rule as supported by any written  
13 **and public hearing** comments submitted:

14 (1) during the public comment period; or

15 (2) by the small business ombudsman under IC 4-22-2.1-6(a), if  
16 applicable.

17 SECTION 28. IC 4-22-2-31, AS AMENDED BY P.L.123-2006,  
18 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
19 JULY 1, 2023]: Sec. 31. After an agency has complied with section 29  
20 of this chapter, or ~~with IC 13-14-9-9(1) or IC 13-14-9-9(2)~~, **adopted**  
21 **the rule in conformity with IC 13-14-9**, as applicable, the agency  
22 shall submit its rule to the attorney general for approval. The agency  
23 shall submit the following to the attorney general:

24 (1) The rule in the form required by section 20 of this chapter.

25 (2) The documents required by section 21 of this chapter.

26 (3) Written authorization to proceed issued by the publisher under  
27 ~~section 24(g)~~ **sections 23 and 24** of this chapter **or IC 13-14-9-4,**  
28 **IC 13-14-9-5, or IC 13-14-9-14, as applicable.**

29 (4) Any other documents specified by the attorney general.

30 The attorney general may require the agency to submit any supporting  
31 documentation that the attorney general considers necessary for the  
32 attorney general's review under section 32 of this chapter. The agency  
33 may submit any additional supporting documentation the agency  
34 considers necessary.

35 SECTION 29. IC 4-22-2-32, AS AMENDED BY P.L.1-2006,  
36 SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
37 JULY 1, 2023]: Sec. 32. (a) The attorney general shall review each rule  
38 submitted under section 31 of this chapter for legality.

39 (b) In the review, the attorney general shall determine whether the  
40 rule adopted by the agency complies with the requirements under  
41 section 29 of this chapter **and (if applicable) IC 13-14-9**. The attorney  
42 general shall consider the following:



- 1 (1) The extent to which all persons affected by the adopted rule  
 2 should have understood from the published rule or rules that their  
 3 interests would be affected.
- 4 (2) The extent to which the subject matter of the adopted rule or  
 5 the issues determined in the adopted rule are different from the  
 6 subject matter or issues that were involved in the published rule  
 7 or rules.
- 8 (3) The extent to which the effects of the adopted rule differ from  
 9 the effects that would have occurred if the published rule or rules  
 10 had been adopted instead.
- 11 In the review, the attorney general shall consider whether the adopted  
 12 rule may constitute the taking of property without just compensation to  
 13 an owner.
- 14 (c) Except as provided in subsections (d) and (h), the attorney  
 15 general shall disapprove a rule under this section only if it:
- 16 (1) has been adopted without statutory authority;  
 17 (2) has been adopted without complying with this chapter;  
 18 (3) does not comply with requirements under section 29 of this  
 19 chapter; or  
 20 (4) violates another law.
- 21 Otherwise, the attorney general shall approve the rule without making  
 22 a specific finding of fact concerning the subjects.
- 23 (d) If an agency submits a rule to the attorney general without  
 24 complying with section 20(a)(2) of this chapter, the attorney general  
 25 may:
- 26 (1) disapprove the rule; or  
 27 (2) return the rule to the agency without disapproving the rule.
- 28 (e) If the attorney general returns a rule under subsection (d)(2), the  
 29 agency may bring the rule into compliance with section 20(a)(2) of this  
 30 chapter and resubmit the rule to the attorney general without readopting  
 31 the rule.
- 32 (f) If the attorney general determines in the course of the review  
 33 conducted under subsection (b) that a rule may constitute a taking of  
 34 property, the attorney general shall advise the following:
- 35 (1) The governor.  
 36 (2) The agency head.
- 37 Advice given under this subsection shall be regarded as confidential  
 38 attorney-client communication.
- 39 (g) The attorney general has forty-five (45) days from the date that  
 40 an agency:
- 41 (1) submits a rule under section 31 of this chapter; or  
 42 (2) resubmits a rule under subsection (e);



1 to approve or disapprove the rule. If the attorney general neither  
 2 approves nor disapproves the rule, the rule is deemed approved, and the  
 3 agency may submit it to the governor for approval under section 33 of  
 4 this chapter without the approval of the attorney general.

5 (h) For rules adopted under IC 13-14-9, the attorney general:

6 (1) shall determine whether the rule adopted by the agency under  
 7 ~~IC 13-14-9-9(2)~~ **is a IC 13-14-9 meets the appropriate**  
 8 **substantial similarity or** logical outgrowth of the proposed rule  
 9 as published under IC 13-14-9-5(a)(2) and of testimony presented  
 10 at the board meeting held under IC 13-14-9-5(a)(3); **standard**  
 11 **under section 29(c) of this chapter;** and

12 (2) may disapprove a rule under this section only if the rule:

13 (A) has been adopted without statutory authority;

14 (B) has been adopted without complying with this chapter or  
 15 IC 13-14-9;

16 (C) ~~is not a logical outgrowth of the proposed rule as~~  
 17 ~~published under IC 13-14-9-5(a)(2) and of the testimony~~  
 18 ~~presented at the board meeting held under IC 13-14-9-5(a)(3);~~  
 19 **meets the appropriate substantial similarity or logical**  
 20 **outgrowth standard under section 29(c) of this chapter;** or

21 (D) violates another law.

22 SECTION 30. IC 4-22-2-37.1, AS AMENDED BY P.L.140-2013,  
 23 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 24 JULY 1, 2023]: Sec. 37.1. (a) The following do not apply to a rule  
 25 adopted under this section:

26 (1) Sections ~~24~~ 23 through ~~36~~ 27 of this chapter

27 ~~(2)~~ or IC 13-14-9 (as applicable).

28 (2) Sections 28 through 36 of this chapter.

29 **The amendments to this section made in the 2023 regular session**  
 30 **of the general assembly apply to provisional rules that are accepted**  
 31 **for filing by the publisher of the Indiana Register after June 30,**  
 32 **2023, regardless of whether the adopting agency initiated official**  
 33 **action to adopt the rule by the name of emergency rule or**  
 34 **provisional rule before July 1, 2023. An action taken before July 1,**  
 35 **2023, in conformity with this section (as effective after June 30,**  
 36 **2023) is validated to the same extent as if the action was taken after**  
 37 **June 30, 2023.**

38 (b) **An agency may adopt a rule may be adopted under on a**  
 39 **subject for which the agency has rulemaking authority using the**  
 40 **procedures in this section if a statute delegating authority to an agency**  
 41 **to adopt rules authorizes adoption of such a rule:**

42 ~~(+)~~ under this section; or



1           (2) in the manner provided by this section:  
 2 **the governor finds that the agency proposing to adopt the rule has**  
 3 **demonstrated to the satisfaction of the governor that use of**  
 4 **provisional rulemaking procedures under this section is necessary**  
 5 **to avoid:**

- 6           (1) an imminent and substantial peril to public health, safety,  
 7           or welfare;  
 8           (2) an imminent and material loss of federal funds for an  
 9           agency program;  
 10           (3) an imminent and material deficit;  
 11           (4) an imminent and substantial violation of a state or federal  
 12           law or the terms of a federal agreement or program;  
 13           (5) injury to the business or interests of the people or any  
 14           public utility of Indiana as determined under IC 8-1-2-113;  
 15           (6) an imminent and substantial peril to:  
 16                (A) wildlife; or  
 17                (B) domestic animal;  
 18           health, safety, or welfare; or  
 19           (7) the spread of invasive species, pests, or diseases affecting  
 20           plants.

21 **To obtain a determination from the governor, an agency must**  
 22 **submit to the governor the text of the proposed provisional rule, a**  
 23 **statement justifying the need for provisional rulemaking**  
 24 **procedures, and any additional information required by the**  
 25 **governor in the form and in the manner required by the governor.**  
 26 **The governor may not approve provisional rulemaking for any**  
 27 **part of a proposed provisional rule that adds or amends language**  
 28 **to increase or expand application of a fee, fine, or civil penalty or**  
 29 **a schedule of fees, fines, or civil penalties before submitting the**  
 30 **proposal to the budget committee for review. A notice of**  
 31 **determination by the governor shall include findings that explain**  
 32 **the basis for the determination. The notice of determination shall**  
 33 **be provided to the agency in an electronic format. Approval of a**  
 34 **request shall be treated as a determination that the rule meets the**  
 35 **criteria in this subsection.**

36           (c) ~~After an agency adopts a rule under this section, the governor~~  
 37 **approves provisional rulemaking procedures for a rule but before**  
 38 **the agency adopts the provisional rule, the agency shall submit the**  
 39 **rule to the publisher for the assignment of obtain a document control**  
 40 **number. The agency shall submit the rule in the form required by**  
 41 **section 20 of this chapter and with the documents required by section**  
 42 **21 of this chapter. from the publisher. The publisher shall determine**



1 the documents and the format of the rule and other documents to that  
 2 must be submitted under this subsection: to the publisher to obtain  
 3 a document control number. The agency must submit at least the  
 4 following:

5 (1) The full text of the proposed provisional rule in the form  
 6 required by section 20 of this chapter.

7 (2) A statement justifying the need for provisional  
 8 rulemaking.

9 (3) The approval of the governor to use provisional  
 10 rulemaking procedures required by law.

11 (4) The documents required by section 21 of this chapter.

12 An agency may not adopt a proposed provisional rule until after  
 13 the publisher notifies the agency that the publisher has complied  
 14 with subsection (d). At least ten (10) regular business days must  
 15 elapse after the publisher has complied with subsection (d) before  
 16 the department of natural resources, the natural resources  
 17 commission, the department of environmental management, or a  
 18 board that has rulemaking authority under IC 13 adopts a  
 19 provisional rule.

20 (d) Upon receipt of documents described in subsection (c), the  
 21 publisher shall distribute the full text of the proposed provisional  
 22 rule to legislators and legislative committees in the manner and the  
 23 form specified by the legislative council or the personnel  
 24 subcommittee of the legislative council acting for the legislative  
 25 council. After distribution has occurred, the publisher shall notify  
 26 the agency of the date that distribution under this subsection has  
 27 occurred.

28 (e) After the document control number has been assigned and  
 29 the agency adopts the rule, the agency shall submit the rule following  
 30 to the publisher for filing:

31 (1) The text of the adopted provisional rule. The agency shall  
 32 submit the provisional rule in the form required by section 20 of  
 33 this chapter. and with

34 (2) A signature page that indicates that the agency has  
 35 adopted the provisional rule in conformity with all procedures  
 36 required by law.

37 (3) If the provisional rule adds or amends language to  
 38 increase or expand application of a fee, fine, or civil penalty  
 39 or a schedule of fees, fines, or civil penalties, the agenda of the  
 40 budget committee meeting at which the rule was scheduled for  
 41 review.

42 (4) The documents required by section 21 of this chapter.



1 The publisher shall determine the format of the **provisional** rule and  
 2 other documents to be submitted under this subsection. **The**  
 3 **substantive text of the adopted provisional rule must be**  
 4 **substantially similar to the text of the proposed provisional rule**  
 5 **submitted to the governor. A provisional rule may suspend but not**  
 6 **repeal a rule approved by the governor under section 34 of this**  
 7 **chapter.**

8 ~~(e)~~ **(f)** Subject to **subsections (c) and (e) and** section 39 of this  
 9 chapter, the publisher shall:

10 (1) accept the rule for filing; ~~and~~

11 (2) electronically record the date and time that the rule is  
 12 accepted; **and**

13 **(3) publish the text of the adopted provisional rule and the**  
 14 **governor's approval in the Indiana Register.**

15 ~~(f)~~ **(g)** A **provisional** rule adopted by an agency under this section  
 16 takes effect on the latest of the following dates:

17 (1) The effective date of the statute delegating authority to the  
 18 agency to adopt the **provisional** rule.

19 (2) The date and time that the **provisional** rule is accepted for  
 20 filing under subsection ~~(e)~~: **(f)**.

21 (3) The effective date stated by the adopting agency in the  
 22 **provisional** rule.

23 (4) The date of compliance with every requirement established by  
 24 law as a prerequisite to the adoption or effectiveness of the  
 25 **provisional** rule.

26 (5) The statutory effective date for ~~an emergency~~ **a provisional**  
 27 rule set forth in the statute authorizing the agency to adopt  
 28 emergency rules: ~~law~~.

29 ~~(g)~~ Unless otherwise provided by the statute authorizing adoption  
 30 of the rule:

31 ~~(1) a rule adopted under this section expires not later than ninety~~  
 32 ~~(90) days after the rule is accepted for filing under subsection (e);~~

33 ~~(2) a rule adopted under this section may be extended by adopting~~  
 34 ~~another rule under this section; but only for one (1) extension~~  
 35 ~~period; and~~

36 ~~(3) for a rule adopted under this section to be effective after one~~  
 37 ~~(1) extension period; the rule must be adopted under:~~

38 ~~(A) sections 24 through 36 of this chapter; or~~

39 ~~(B) IC 13-14-9;~~

40 ~~as applicable.~~

41 **(h) An agency may amend a provisional rule with another**  
 42 **provisional rule by following the procedures in this section for the**



1 amending provisional rule. However, unless otherwise provided by  
 2 IC 4-22-2.3, a provisional rule and all amendments of a provisional  
 3 rule by another provisional rule expire not later than one hundred  
 4 eighty (180) days after the initial provisional rule is accepted for  
 5 filing under subsection (f). The subject of the provisional rule,  
 6 including all amendments to the provisional rule, may not be  
 7 subsequently extended under this section or section 37.2 of this  
 8 chapter. If the governor determines that the circumstance that is  
 9 the basis for using the procedures under this section ceases to exist,  
 10 the governor may terminate the provisional rule before the lapse  
 11 of one hundred eighty (180) days. The termination is effective when  
 12 filed with the publisher. The publisher shall publish the  
 13 termination notice in the Indiana Register.

14 ~~(h) This section may not be used to readopt a rule under IC 4-22-2.5.~~

15 ~~(i) The publisher of the Indiana administrative code shall annually  
 16 publish a list of agencies authorized to adopt rules under this section.~~

17 **(i) Subject to subsection (j), the attorney general or the governor  
 18 may file an objection to a provisional rule that is adopted under  
 19 this section not later than forty-five (45) days after the date that a  
 20 provisional rule or amendment to a provisional rule is accepted for  
 21 filing under subsection (f). The objection must cite the document  
 22 control number for the affected provisional rule and state the basis  
 23 for the objection. When filed with the publisher, the objection has  
 24 the effect of invalidating the provisional rule or amendment to a  
 25 provisional rule. The publisher shall publish the objection in the  
 26 Indiana Register.**

27 **(j) The attorney general may file a written objection to a  
 28 provisional rule under subsection (i) only if the attorney general  
 29 determines that the provisional rule has been adopted:**

30 **(1) without statutory authority; or**

31 **(2) without complying with this section.**

32 **A notice of objection to a provisional rule by the attorney general  
 33 must include findings that explain the basis for the determination.  
 34 The notice of objection shall be provided to the agency in an  
 35 electronic format.**

36 **SECTION 31. IC 4-22-2-37.2 IS ADDED TO THE INDIANA  
 37 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 38 [EFFECTIVE JULY 1, 2023]: Sec. 37.2. (a) The following do not  
 39 apply to a rule adopted under this section:**

40 **(1) Sections 23 through 27 of this chapter or IC 13-14-9 (as  
 41 applicable).**

42 **(2) Sections 28 through 36 of this chapter.**



1 The amendments to this section made in the 2023 regular session  
2 of the general assembly apply to interim rules that are accepted for  
3 filing by the publisher of the Indiana Register after June 30, 2023,  
4 regardless of whether the adopting agency initiated official action  
5 to adopt the interim rule before July 1, 2023. An action taken  
6 before July 1, 2023, in conformity with this section (as effective  
7 after June 30, 2023) is validated to the same extent as if the action  
8 was taken after June 30, 2023.

9 (b) An agency may only adopt a rule on a subject for which the  
10 agency has rulemaking authority using the procedures in this  
11 section if the governor finds that the agency proposing to adopt the  
12 rule has demonstrated to the satisfaction of the governor that use  
13 of interim rulemaking procedures under this section is necessary  
14 to implement:

15 (1) a new state or federal law or program, rule of another  
16 state agency, federal regulation, or federal grant or loan  
17 agreement, or (if used by the agency to carry out the agency's  
18 responsibilities) a building, an equipment, a firefighting, a  
19 safety, or a professional code adopted by a nationally  
20 recognized organization;

21 (2) a change in a state or federal law or program, rule of  
22 another state agency, federal regulation, federal grant or loan  
23 agreement, or (if used by the agency to carry out the agency's  
24 responsibilities) a building, an equipment, a firefighting, a  
25 safety, or a professional code adopted by a nationally  
26 recognized organization; or

27 (3) a category of rule authorized under IC 4-22-2.3 to be  
28 adopted as an interim rule;

29 before the time that a final rule approved by the governor under  
30 section 34 of this chapter could reasonably take effect.

31 (c) To obtain a determination from the governor, an agency  
32 must submit to the governor the text of the proposed interim rule,  
33 a statement justifying the need for interim rulemaking procedures,  
34 and any additional information required by the governor in the  
35 form and in the manner required by the governor. The governor  
36 may not approve interim rulemaking for any part of a proposed  
37 interim rule that adds or amends language to increase or expand  
38 application of a fee, fine, or civil penalty or a schedule of fees, fines,  
39 or civil penalties before submitting the proposal to the budget  
40 committee for review. A notice of determination by the governor  
41 shall include findings that explain the basis for the determination.  
42 The notice of determination shall be provided to the agency in an





1 electronic format. Approval of a request shall be treated as a  
2 determination that the rule meets the criteria in this subsection.

3 (d) To publish a notice of interim rulemaking in the Indiana  
4 Register, the agency must submit the following to the publisher:

5 (1) The full text of the agency's proposed interim rule in the  
6 form required by section 20 of this chapter.

7 (2) The approval of the governor to use interim rulemaking  
8 procedures for the rule.

9 (3) If the interim rule adds or amends language to increase or  
10 expand application of a fee, fine, or civil penalty or a schedule  
11 of fees, fines, or civil penalties, the agenda of the budget  
12 committee meeting at which the rule was scheduled for  
13 review.

14 (4) The documents required by section 21 of this chapter.

15 The publisher shall review materials submitted under this section  
16 and determine the date that the publisher intends to include the  
17 material in the Indiana Register. After establishing the intended  
18 publication date, the publisher shall provide a written or an  
19 electronic mail authorization to proceed to the agency.

20 (e) The agency shall include the following in the notice of the  
21 public comment period:

22 (1) A general description of the subject matter of the proposed  
23 interim rule, including the document control number.

24 (2) The full text of the agency's proposed interim rule in the  
25 form required by section 20 of this chapter (excluding the text  
26 of a matter incorporated by reference under section 21 of this  
27 chapter).

28 (3) A statement justifying any requirement or cost that is:

29 (A) imposed on a regulated entity under the interim rule;  
30 and

31 (B) not expressly required by the statute authorizing the  
32 agency to adopt rules or any other state or federal law.

33 The statement required under this subdivision must include  
34 a reference to any data, studies, or analyses relied upon by the  
35 agency in determining that the imposition of the requirement  
36 or cost is necessary.

37 (4) Information concerning where, when, and how a person  
38 may inspect and copy any data, studies, or analyses  
39 referenced under subdivision (3).

40 (5) Information concerning where, when, and how a person  
41 may inspect any documents incorporated by reference into  
42 the proposed interim rule under section 21 of this chapter.



1           **(6) A date that is thirty (30) days after the notice is published**  
 2           **in the Indiana Register by which written comments are due**  
 3           **and a statement explaining that any person may submit**  
 4           **written comments concerning the proposed interim rule**  
 5           **during the public comment period and instructions on when,**  
 6           **where, and how the person may submit written comments.**

7           **However, inadequacy or insufficiency of the subject matter**  
 8           **description under subdivision (1) or a statement of justification**  
 9           **under subdivision (3) in a notice does not invalidate a rulemaking**  
 10           **action. An agency may continue the comment period by publishing**  
 11           **a subsequent notice in the Indiana Register extending the comment**  
 12           **period.**

13           **(f) Before adopting the interim rule, the agency shall prepare a**  
 14           **written response to comments received by the agency, including the**  
 15           **reasons for rejecting any recommendations made in the comments.**

16           **(g) After an agency has completed the public comment period**  
 17           **and complied with subsection (f), the agency may:**

18                   **(1) adopt a rule that is identical to a proposed interim rule**  
 19                   **published in the Indiana Register under this section; or**

20                   **(2) adopt a revised version of a proposed interim rule**  
 21                   **published under this section and include provisions that did**  
 22                   **not appear in the initially published proposed version.**

23           **An agency may not adopt an interim rule that substantially differs**  
 24           **from the version of the proposed interim rule published in the**  
 25           **Indiana Register under this section, unless it is a logical outgrowth**  
 26           **of any proposed interim rule as supported by any written**  
 27           **comments submitted during the public comment period.**

28           **(h) After the agency adopts the interim rule, the agency shall**  
 29           **submit the following to the publisher for filing:**

30                   **(1) The text of the adopted interim rule. The agency shall**  
 31                   **submit the full text of the interim rule in the form required by**  
 32                   **section 20 of this chapter.**

33                   **(2) A summary of the comments received by the agency**  
 34                   **during the comment period and the agency's response to the**  
 35                   **comments.**

36                   **(3) A signature page that indicates that the agency has**  
 37                   **adopted the interim rule in conformity with all procedures**  
 38                   **required by law.**

39                   **(4) The documents required by section 21 of this chapter.**

40           **The publisher shall determine the format of the interim rule and**  
 41           **other documents to be submitted under this subsection. An interim**  
 42           **rule may suspend but not repeal a rule approved by the governor**



1 under section 34 of this chapter.

2 (i) Subject to subsection (h) and section 39 of this chapter, the  
3 publisher shall:

4 (1) accept the rule for filing;

5 (2) electronically record the date and time that the rule is  
6 accepted; and

7 (3) publish the text of the adopted interim rule and the  
8 governor's approval in the Indiana Register.

9 (j) An interim rule adopted by an agency under this section  
10 takes effect on the latest of the following dates:

11 (1) The effective date of the statute delegating authority to the  
12 agency to adopt the interim rule.

13 (2) The date and time that the interim rule is accepted for  
14 filing under subsection (i).

15 (3) The effective date stated by the adopting agency in the  
16 interim rule.

17 (4) The date of compliance with every requirement  
18 established by law as a prerequisite to the adoption or  
19 effectiveness of the interim rule.

20 (5) The statutory effective date for an interim rule set forth in  
21 law.

22 (k) An agency may amend an interim rule with another interim  
23 rule by following the procedures in this section for adoption of an  
24 interim rule. Except as provided in IC 4-22-2.3, an interim rule and  
25 all subsequent rules on the same subject adopted under section 37.1  
26 of this chapter or this section expire not later than four hundred  
27 twenty-five (425) days after the initial interim rule is accepted for  
28 filing under subsection (i).

29 (l) Subject to subsection (m), the attorney general or the  
30 governor may file an objection to an interim rule that is adopted  
31 under this section not later than forty-five (45) days after the date  
32 that an interim rule or amendment to an interim rule is accepted  
33 for filing under subsection (i). The objection must cite the  
34 document control number for the affected interim rule and state  
35 the basis for the objection. When filed with the publisher, the  
36 objection has the effect of invalidating the interim rule or  
37 amendment to an interim rule. The publisher shall publish the  
38 objection in the Indiana Register.

39 (m) The attorney general may file a written objection to an  
40 interim rule under subsection (l) only if the attorney general  
41 determines that the interim rule has been adopted:

42 (1) without statutory authority; or



1           **(2) without complying with this section.**

2           **A notice of objection to an interim rule by the attorney general**  
 3           **must include findings that explain the basis for the determination.**  
 4           **The notice of objection shall be provided to the agency in an**  
 5           **electronic format.**

6           SECTION 32. IC 4-22-2-38, AS AMENDED BY P.L.123-2006,  
 7           SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 8           JULY 1, 2023]: Sec. 38. (a) This section applies to a rulemaking action  
 9           resulting in any of the following rules:

10           (1) A rule that brings another rule into conformity with section 20  
 11           of this chapter.

12           (2) A rule that amends another rule to replace an inaccurate  
 13           reference to a statute, rule, regulation, other text, governmental  
 14           entity, or location with an accurate reference, when the inaccuracy  
 15           is the result of the rearrangement of a federal or state statute, rule,  
 16           or regulation under a different citation number, a federal or state  
 17           transfer of functions from one (1) governmental entity to another,  
 18           a change in the name of a federal or state governmental entity, or  
 19           a change in the address of an entity.

20           (3) A rule correcting any other typographical, clerical, or spelling  
 21           error in another rule.

22           (b) Sections 24 through ~~37.1~~ **37.2** of this chapter do not apply to  
 23           rules described in subsection (a).

24           (c) Notwithstanding any other statute, an agency may adopt a rule  
 25           described by subsection (a) without complying with any statutory  
 26           notice, hearing, adoption, or approval requirement. In addition, the  
 27           governor may adopt a rule described in subsection (a) for an agency  
 28           without the agency's consent or action.

29           (d) A rule described in subsection (a) shall be submitted to the  
 30           publisher for the assignment of a document control number. The  
 31           agency (or the governor, for the agency) shall submit the rule in the  
 32           form required by section 20 of this chapter and with the documents  
 33           required by section 21 of this chapter. The publisher shall determine  
 34           the number of copies of the rule and other documents to be submitted  
 35           under this subsection.

36           (e) After a document control number is assigned, the agency (or the  
 37           governor, for the agency) shall submit the rule to the publisher for  
 38           filing. The agency (or the governor, for the agency) shall submit the  
 39           rule in the form required by section 20 of this chapter and with the  
 40           documents required by section 21 of this chapter. The publisher shall  
 41           determine the format of the rule and other documents to be submitted  
 42           under this subsection.



- 1 (f) Subject to section 39 of this chapter, the publisher shall:  
 2 (1) accept the rule for filing; and  
 3 (2) electronically record the date and time that it is accepted.  
 4 (g) Subject to subsection (h), a rule described in subsection (a) takes  
 5 effect on the latest of the following dates:  
 6 (1) The date that the rule being corrected by a rule adopted under  
 7 this section becomes effective.  
 8 (2) The date that is forty-five (45) days from the date and time  
 9 that the rule adopted under this section is accepted for filing  
 10 under subsection (f).  
 11 (h) The governor or the attorney general may file an objection to a  
 12 rule that is adopted under this section before the date that is forty-five  
 13 (45) days from the date and time that the rule is accepted for filing  
 14 under subsection (f). When filed with the publisher, the objection has  
 15 the effect of invalidating the rule.  
 16 SECTION 33. IC 4-22-2-39, AS AMENDED BY P.L.123-2006,  
 17 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 18 JULY 1, 2023]: Sec. 39. (a) When an agency submits a rule for filing  
 19 under section 35, 37.1, **37.2**, or 38 of this chapter, the publisher may  
 20 accept the rule for filing only if the following conditions are met:  
 21 (1) The following documents are submitted to allow the publisher  
 22 to comply with IC 4-22-7-5:  
 23 (A) One (1) electronic copy of the rule.  
 24 (B) One (1) copy of any matters incorporated by reference  
 25 under section 21 of this chapter in the format specified by the  
 26 publisher.  
 27 (C) One (1) copy of any supporting documentation submitted  
 28 under section 31 of this chapter in the format specified by the  
 29 publisher.  
 30 (2) Each submitted copy includes a reference to the document  
 31 control number assigned to the rule by the publisher.  
 32 (3) Each submitted copy indicates that the agency has conducted  
 33 its rulemaking action in conformity with all procedures required  
 34 by law. However, if section 31 of this chapter applies to the rule,  
 35 the publisher shall rely on the approval of the attorney general as  
 36 the basis for determining that the agency has complied with all  
 37 procedures required before the date of the approval.  
 38 (b) If a rule includes a statement that the rule is not effective until:  
 39 (1) an agency has complied with requirements established by the  
 40 federal or state government;  
 41 (2) a specific period of time has elapsed; or  
 42 (3) a date has occurred;



1 the agency has complied with subsection (a)(3) even if the described  
 2 event or time has not occurred before the publisher reviews the rule  
 3 under this section.

4 (c) The publisher shall take no more than three (3) business days to  
 5 complete the review of a rule under this section.

6 SECTION 34. IC 4-22-2-40, AS AMENDED BY P.L.53-2014,  
 7 SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 8 JULY 1, 2023]: Sec. 40. (a) At any time before a rule is accepted for  
 9 filing by the publisher under section 35, 37.1, **37.2**, or 38 of this  
 10 chapter, the agency that adopted the rule may recall it. A rule may be  
 11 recalled regardless of whether:

12 (1) the rule has been disapproved by the attorney general under  
 13 section 32 of this chapter; or

14 (2) the rule has been disapproved by the governor under section  
 15 34 of this chapter.

16 (b) **IC 13-14-9 and** sections ~~24 23~~ through 38 of this chapter do not  
 17 apply to a recall action under this section. However, the agency shall  
 18 distribute a notice of its recall action to the publisher for publication in  
 19 the Indiana Register. **IC 13-14-9 and** sections ~~24 23~~ and 26 of this  
 20 chapter do not apply to a readoption action under subsection (c).

21 (c) After an agency recalls a rule, the agency may reconsider its  
 22 adoption action and adopt an identical rule or a revised rule. However,  
 23 if **IC 13-14-9 or** sections ~~24 23~~ through 36 of this chapter apply to the  
 24 recalled rule, the readopted rule must comply with the requirements  
 25 under section 29 of this chapter **or IC 13-14-9-9 (as applicable)**.

26 (d) The recall of a rule under this section voids any approval given  
 27 after the rule was adopted and before the rule was recalled.

28 (e) If a rule is:

29 (1) subject to sections 31 and 33 of this chapter;

30 (2) recalled under subsection (a); and

31 (3) readopted under subsection (c);

32 the agency shall resubmit the readopted version of the recalled rule to  
 33 the attorney general and the governor for approval. The attorney  
 34 general and the governor have the full statutory period to approve or  
 35 disapprove the readopted rule. ~~If the recalled rule was submitted to the~~  
 36 ~~office of management and budget under section 28 of this chapter,~~ The  
 37 agency shall resubmit the readopted version of a recalled rule to the  
 38 office of management and budget with sufficient information for the  
 39 office of management and budget to evaluate whether ~~its~~ **the** initial  
 40 ~~fiscal impact statement regulatory analysis submitted to the office~~  
 41 **of management and budget** under section ~~28 22.8~~ of this chapter  
 42 needs to be revised. ~~The office of management and budget shall revise~~



1 a fiscal impact statement under section 28 of this chapter If the fiscal  
 2 impact of the readopted rule is substantially different from the recalled  
 3 rule, **the agency shall submit the revised regulatory analysis to the**  
 4 **publisher for publication in the Indiana Register with the**  
 5 **document control number assigned by the publisher to the rule.**  
 6 The agency also shall comply with any other applicable approval  
 7 requirement provided by statute.

8 (f) The readopted version of a recalled rule is effective only after the  
 9 agency has complied with section 35, 37.1, **37.2**, or 38 of this chapter.

10 SECTION 35. IC 4-22-2-41, AS AMENDED BY P.L.123-2006,  
 11 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 12 JULY 1, 2023]: Sec. 41. (a) At any time before a rule is accepted by the  
 13 publisher for filing under section 35, 37.1, **37.2**, or 38 of this chapter,  
 14 the agency that adopted the rule may withdraw it.

15 (b) **IC 13-14-9 and** sections ~~24~~ **23** through 40 of this chapter do not  
 16 apply to a withdrawal action. However, the withdrawing agency shall  
 17 distribute a notice of the withdrawal to the publisher for publication in  
 18 the Indiana Register.

19 (c) The withdrawal of a rule under this section terminates the  
 20 rulemaking action, and the withdrawn rule may become effective only  
 21 through another rulemaking action initiated under this chapter.

22 SECTION 36. IC 4-22-2.1-1, AS AMENDED BY P.L.139-2007,  
 23 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 24 JULY 1, 2023]: Sec. 1. Except for a rule that is the subject of a  
 25 rulemaking action under IC 13-14-9, IC 22-12, IC 22-13, IC 22-14, or  
 26 IC 22-15, this chapter applies to a rule for which the notice **of the first**  
 27 **public comment period** required by IC 4-22-2-23 is published by an  
 28 agency after June 30, 2005.

29 SECTION 37. IC 4-22-2.1-5, AS AMENDED BY P.L.109-2015,  
 30 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 31 JULY 1, 2023]: Sec. 5. (~~a~~) If an agency intends to adopt a rule under  
 32 IC 4-22-2 that will impose requirements or costs on small businesses,  
 33 the agency shall prepare a statement that describes the annual  
 34 economic impact of a rule on all small businesses after the rule is fully  
 35 implemented. ~~as described in subsection (b):~~ The statement required by  
 36 this section must include the following:

- 37 (1) An estimate of the number of small businesses, classified by  
 38 industry sector, that will be subject to the proposed rule.  
 39 (2) An estimate of the average annual reporting, record keeping,  
 40 and other administrative costs that small businesses will incur to  
 41 comply with the proposed rule.  
 42 (3) An estimate of the total annual economic impact that



1 compliance with the proposed rule will have on all small  
 2 businesses subject to the rule. ~~The agency is not required to~~  
 3 ~~submit the proposed rule to the office of management and budget~~  
 4 ~~for a fiscal analysis under IC 4-22-2-28 unless the estimated~~  
 5 ~~economic impact of the rule is greater than five hundred thousand~~  
 6 ~~dollars (\$500,000) on all regulated entities; as set forth in~~  
 7 ~~IC 4-22-2-28.~~

8 (4) A statement justifying any requirement or cost that is:

9 (A) imposed on small businesses by the rule; and

10 (B) not expressly required by:

11 (i) the statute authorizing the agency to adopt the rule; or

12 (ii) any other state or federal law.

13 The statement required by this subdivision must include a  
 14 reference to any data, studies, or analyses relied upon by the  
 15 agency in determining that the imposition of the requirement or  
 16 cost is necessary.

17 (5) A regulatory flexibility analysis that considers any less  
 18 intrusive or less costly alternative methods of achieving the  
 19 purpose of the proposed rule. The analysis under this subdivision  
 20 must consider the following methods of minimizing the economic  
 21 impact of the proposed rule on small businesses:

22 (A) The establishment of less stringent compliance or  
 23 reporting requirements for small businesses.

24 (B) The establishment of less stringent schedules or deadlines  
 25 for compliance or reporting requirements for small businesses.

26 (C) The consolidation or simplification of compliance or  
 27 reporting requirements for small businesses.

28 (D) The establishment of performance standards for small  
 29 businesses instead of design or operational standards imposed  
 30 on other regulated entities by the rule.

31 (E) The exemption of small businesses from part or all of the  
 32 requirements or costs imposed by the rule.

33 If the agency has made a preliminary determination not to  
 34 implement one (1) or more of the alternative methods considered,  
 35 the agency shall include a statement explaining the agency's  
 36 reasons for the determination, including a reference to any data,  
 37 studies, or analyses relied upon by the agency in making the  
 38 determination.

39 ~~(b) For purposes of subsection (a), a proposed rule will be fully~~  
 40 ~~implemented with respect to small businesses after:~~

41 ~~(1) the conclusion of any phase-in period during which:~~

42 ~~(A) the rule is gradually made to apply to small businesses or~~





- 1 certain types of small businesses; or  
 2 (B) the costs of the rule are gradually implemented; and  
 3 (2) the rule applies to all small businesses that will be affected by  
 4 the rule.

5 In determining the total annual economic impact of the rule under  
 6 subsection (a)(3); the agency shall consider the annual economic  
 7 impact on all small businesses beginning with the first twelve (12)  
 8 month period after the rule is fully implemented. The agency may use  
 9 actual or forecasted data and may consider the actual and anticipated  
 10 effects of inflation and deflation. The agency shall describe any  
 11 assumptions made and any data used in determining the total annual  
 12 economic impact of a rule under subsection (a)(3):

13 (c) The agency shall:

- 14 (1) publish the statement required under subsection (a) in the  
 15 Indiana Register as required by IC 4-22-2-24; and  
 16 (2) deliver a copy of the statement, along with the proposed rule;  
 17 to the small business ombudsman not later than the date of  
 18 publication under subdivision (1):

19 SECTION 38. IC 4-22-2.1-7, AS ADDED BY P.L.188-2005,  
 20 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 21 JULY 1, 2023]: Sec. 7. Before an agency may act under ~~IC 4-22-2.5~~  
 22 **IC 4-22-2.6** to readopt a rule to which the chapter applies, the agency  
 23 must conduct the review required under ~~IC 4-22-2.5-3.1.~~  
 24 **IC 4-22-2.6-4.**

25 SECTION 39. IC 4-22-2.3 IS ADDED TO THE INDIANA CODE  
 26 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 27 JULY 1, 2023]:

28 **Chapter 2.3. Transitional Provisions; Exceptions to Rulemaking**  
 29 **Procedures**

30 **Sec. 1. (a) This subsection and subsection (b) set an expiration**  
 31 **date for rules adopted under IC 4-22-2-37.1 (as effective before**  
 32 **July 1, 2023) or IC 4-22-2-37 (before its repeal) that at the time of**  
 33 **adoption were permitted by law to continue in effect for an**  
 34 **indefinite period of time. The rules to which this subsection applies**  
 35 **include rules that were permitted to continue until another**  
 36 **emergency rule or a final rule was adopted to replace the**  
 37 **emergency rule or the agency repealed the emergency rule. Subject**  
 38 **to subsections (b) and (c), the rule expires not later than:**

- 39 (1) October 1, 2023; or  
 40 (2) if the rule is included on a list described in subsection (d),  
 41 October 1, 2024;

42 as applicable. An emergency rule that expires under this subsection



1 may not be renewed under IC 4-22-2-37.1 (as effective after June  
2 30, 2023). If the rule meets the criteria in IC 4-22-2-37.2 for  
3 adoption as an interim rule, the rule may be adopted under  
4 IC 4-22-2-37.2.

5 (b) The text of an emergency rule adopted under IC 4-22-2-37.1  
6 (as effective before July 1, 2023) or IC 4-22-2-37 (before its repeal)  
7 that is:

8 (1) incorporated into a provision of the Indiana  
9 Administrative Code that before July 1, 2023, was amended  
10 under the procedures in IC 4-22-2-23 through IC 4-22-2-36 or  
11 IC 13-14-9 (as applicable); or

12 (2) readopted as part of a provision of the Indiana  
13 Administrative Code that was readopted under IC 4-22-2.5  
14 (before its repeal) or IC 13-14-9.5 (before its repeal);

15 continues in effect to the extent that the text remains part of the  
16 provision of the Indiana Administrative Code into which the  
17 emergency rule text was incorporated.

18 (c) An emergency rule adopted under IC 4-22-2-37.1 (as  
19 effective before July 1, 2023) of the type described in sections 3  
20 through 9 of this chapter, expires as provided in the applicable  
21 provisions of sections 3 through 9 of this chapter.

22 (d) Not later than September 1, 2023, the governor may submit  
23 to the publisher a list of rules described in subsection (a) for which  
24 the expiration under this section is October 1, 2024, instead of  
25 October 1, 2023. The publisher shall publish a list submitted under  
26 this subsection in the Indiana Register.

27 **Sec. 2.** Before a provisional rule adopted under IC 4-22-2-37.1  
28 (as effective after June 30, 2023) expires, the governor by executive  
29 order may authorize the extension of the provisional rule under the  
30 interim procedures in IC 4-22-2-37.2 if the governor determines  
31 and finds in the executive order that the provisional circumstances  
32 justifying the provisional rule continue to exist. A rule adopted  
33 under the authority of an extension under this section, expires not  
34 later than one (1) year after the date on which the rules are  
35 published in the Indiana Register.

36 **Sec. 3.** The director of the department of natural resources may  
37 adopt interim rules under the interim rule procedures in  
38 IC 4-22-2-37.2 to temporarily modify or suspend a rule described  
39 in IC 14-22-2-6 (fish and wildlife rules). An interim rule authorized  
40 under this section expires not later than one (1) year after the rule  
41 is accepted for filing by the publisher of the Indiana Register and  
42 may not be continued in another interim rule.



1           **Sec. 4. The Indiana state board of education may adopt interim**  
 2 **rules under the interim rule procedures in IC 4-22-2-37.2 for the**  
 3 **provision of special education or related services to an eligible**  
 4 **choice scholarship student who receives an amount under**  
 5 **IC 20-51-4-4(a)(2). An interim rule authorized under this section**  
 6 **expires not later than one (1) year after the rule is accepted for**  
 7 **filing by the publisher of the Indiana Register and may not be**  
 8 **continued in another interim rule.**

9           **Sec. 5. The department of natural resources (or to the extent**  
 10 **permitted by IC 14-10-2, the natural resources commission) may**  
 11 **adopt interim rules under the interim rule procedures in**  
 12 **IC 4-22-2-37.2 to carry out the duties of the department of natural**  
 13 **resources under a law listed in IC 14-10-2-5. A rule described in**  
 14 **this section may be continued in another interim rule only if the**  
 15 **governor determines under section IC 4-22-2-37.2(c) that the policy**  
 16 **options available to the agency are so limited that use of the**  
 17 **additional notice, comment, and review procedures in IC 4-22-2-23**  
 18 **through IC 4-22-2-36 would provide no benefit to persons**  
 19 **regulated or otherwise affected by the rule.**

20           **Sec. 6. The following apply to the department of financial**  
 21 **institutions:**

22           **(1) The department of financial institutions shall adopt rules**  
 23 **under the interim rule procedures in IC 4-22-2-37.2**  
 24 **announcing:**

25           **(A) sixty (60) days before January 1 of each odd-numbered**  
 26 **year in which dollar amounts under IC 24-4.5 (Uniform**  
 27 **Consumer Credit Code) are to change, the changes in**  
 28 **dollar amounts required by IC 24-4.5-1-106(2);**

29           **(B) promptly after the changes occur, changes in the Index**  
 30 **required by IC 24-4.5-1-106(3), including, when applicable,**  
 31 **the numerical equivalent of the Reference Base Index**  
 32 **under a revised Reference Base Index and the designation**  
 33 **or title of any index superseding the Index;**

34           **(C) the adjustments required under IC 24-9-2-8 concerning**  
 35 **high cost home loans; and**

36           **(D) the adjustments required under IC 34-55-10-2**  
 37 **(bankruptcy exemptions; limitations) or IC 34-55-10-2.5.**

38           **A rule described in this subdivision expires not later than**  
 39 **January of the next odd-numbered year after the department**  
 40 **of financial institutions is required to issue the rule.**

41           **(2) The department of financial institutions may adopt a rule**  
 42 **under the interim rule procedures in IC 4-22-2-37.2 for a rule**



1 permitted under IC 24-4.4-1-101 (licensing system for  
 2 creditors and mortgage loan originators) or IC 24-4.5  
 3 (Uniform Consumer Credit Code) if the department of  
 4 financial institutions declares an emergency. The rule  
 5 described in this subdivision expires not later than two (2)  
 6 years after the rule is effective.

7 (3) The department of financial institutions may adopt a rule  
 8 described in IC 34-55-10-2 (bankruptcy exemptions;  
 9 limitations) or IC 34-55-10-2.5 in conformity with the  
 10 procedures in IC 4-22-2-23 through IC 4-22-2-36 or the  
 11 interim rule procedures in IC 4-22-2-37.2. A rule described in  
 12 this subdivision adopted under IC 4-22-2-37.2 expires not  
 13 later than two (2) years after the rule is accepted for filing by  
 14 the publisher of the Indiana Register.

15 A rule described in this section may be continued in another  
 16 interim rule only if the governor determines under section  
 17 IC 4-22-2-37.2(c) that the policy options available to the agency are  
 18 so limited that use of the additional notice, comment, and review  
 19 procedures in IC 4-22-2-23 through IC 4-22-2-36 would provide no  
 20 benefit to persons regulated or otherwise affected by the rule.

21 **Sec. 7.** The Indiana utility regulatory commission may adopt  
 22 interim rules under the interim rule procedures in IC 4-22-2-37.2  
 23 pursuant to its authority under IC 8-1-1-3(g) or IC 8-1-2-113. A  
 24 rule described in this section expires not later than two (2) years  
 25 after the rule is accepted for filing by the publisher of the Indiana  
 26 Register and may not be continued in another interim rule.

27 **Sec. 8.** The Indiana board of pharmacy may adopt interim rules  
 28 under IC 4-22-2-37.2 to declare a substance is a synthetic drug if  
 29 the board finds that the substance:

- 30 (1) has been scheduled or emergency scheduled by the United  
 31 States Drug Enforcement Administration;
- 32 (2) has been scheduled, emergency scheduled, or criminalized  
 33 by another state; or
- 34 (3) has:
  - 35 (A) a high potential for abuse; and
  - 36 (B) no accepted medical use in treatment in the United  
 37 States or lacks accepted safety for use in treatment under  
 38 medical supervision.

39 In making a determination, the Indiana board of pharmacy shall  
 40 consider the factors described in IC 25-26-13-4.1. Notwithstanding  
 41 IC 4-22-2-37.2(i), a rule described in this section becomes effective  
 42 when the rule is published in the Indiana Register. A rule described



1 in this section expires not later than one (1) year after the rule is  
 2 accepted for filing by the publisher of the Indiana Register and  
 3 may not be continued in another interim rule.

4 **Sec. 9. The Indiana pesticide review board may adopt interim**  
 5 **rules under IC 4-22-2-37.2 to classify a pesticide as a restricted use**  
 6 **pesticide or a pesticide for use by prescription only pending review**  
 7 **by the general assembly, if the Indiana pesticide review board finds**  
 8 **that:**

9 (1) the pesticide has been classified as a restricted use  
 10 pesticide or a pesticide for use by prescription only by the  
 11 United States Environmental Protection Agency; and

12 (2) adoption of the interim rule is necessary to prevent an  
 13 undue and immediate hazard to persons, animals, wildlife,  
 14 lands, or water, other than the pests that the pesticide is  
 15 intended to prevent, destroy, control, or mitigate.

16 **A rule described in this section expires not later than sixty (60)**  
 17 **days after adjournment sine die of the regular session of the**  
 18 **general assembly that occurs after the interim rule proceeding is**  
 19 **commenced.**

20 SECTION 40. IC 4-22-2.5 IS REPEALED [EFFECTIVE JULY 1,  
 21 2023]. (Expiration and Readoption of Administrative Rules).

22 SECTION 41. IC 4-22-2.6 IS ADDED TO THE INDIANA CODE  
 23 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 24 JULY 1, 2023]:

25 **Chapter 2.6. Expiration and Readoption of Administrative**  
 26 **Rules**

27 **Sec. 1. (a) Except as provided in this section and section 10 of**  
 28 **this chapter, a rule expires January 1 of the fifth year after the**  
 29 **year in which the rule takes effect, unless the rule expires or is**  
 30 **repealed on an earlier date. Except for an amendment made under**  
 31 **IC 4-22-2-38, the expiration date of a rule under this section is**  
 32 **extended each time that a rule amending or readopting an**  
 33 **unexpired rule takes effect. The rule, as amended or readopted,**  
 34 **expires on January 1 of the fifth year after the year in which the**  
 35 **amendment or readoption takes effect.**

36 **(b) If the latest version of a rule became effective:**

37 (1) in calendar year 2017, the rule expires not later than  
 38 January 1, 2024;

39 (2) in calendar year 2018, the rule expires not later than  
 40 January 1, 2025;

41 (3) in calendar year 2019, the rule expires not later than  
 42 January 1, 2026; or



- 1 (4) in calendar year 2020, the rule expires not later than  
2 January 1, 2027.
- 3 (c) If the latest version of a rule became effective before January  
4 1, 2017, and:  
5 (1) the rule was adopted by an agency established under  
6 IC 13, the rule expires not later than January 1, 2025;  
7 (2) the rule was adopted by an agency established under  
8 IC 16, the rule expires not later than January 1, 2026; or  
9 (3) the rule was adopted by an agency not described in  
10 subdivision (1) or (2), the rule expires not later than January  
11 1, 2027.
- 12 (d) A readoption rulemaking action under IC 4-22-2.5 (before  
13 its repeal) or IC 13-14-9.5 (before its repeal) that became effective  
14 before July 1, 2023, is validated to the same extent as if the  
15 rulemaking action had been conducted under the procedures in  
16 this chapter.
- 17 (e) The determination of whether an administrative rule expires  
18 under this chapter shall be applied at the level of an Indiana  
19 Administrative Code section.
- 20 **Sec. 2.** An agency that has rulemaking authority may readopt a  
21 rule in anticipation of a rule's expiration under section 1 of this  
22 chapter. To readopt a rule, an agency may readopt the rule either:  
23 (1) without changes in conformity with the procedures in  
24 sections 3 through 9 of this chapter; or  
25 (2) with or without changes in conformity with the procedures  
26 in IC 4-22-2-23 through IC 4-22-2-36 (as modified by  
27 IC 13-14-9, when applicable).
- 28 **Sec. 3.** (a) Except as provided in subsection (b), if an agency  
29 intends to readopt a rule, the agency shall, not later than January  
30 1 of the fourth year after the year in which the rule takes effect,  
31 provide an initial notice of the intended readoption in an electronic  
32 format designated by the publisher to legislators and legislative  
33 committees in the manner and on the schedule specified by the  
34 legislative council or the personnel subcommittee of the legislative  
35 council acting for the legislative council.
- 36 (b) An agency is not required to provide the initial notice under  
37 subsection (a) for a rule described in section 1(b)(1) of this chapter.
- 38 **Sec. 4.** (a) To readopt a rule, an agency must conduct a review  
39 of the rule to consider the continued need for the rule and whether  
40 the rule, if readopted, will meet each of the standards in  
41 IC 4-22-2-19.5 and (if applicable) the requirements for fees, fines,  
42 and civil penalties in IC 4-22-2-19.6.



1           (b) In the review, the agency shall reexamine previous cost  
 2 benefit, economic impact, fiscal impact, and regulatory burden  
 3 statements prepared by the agency for the rule under IC 4-3-22-13,  
 4 IC 4-3-27-12, IC 4-22-2-22.7, IC 4-22-2-22.8, IC 4-22-2-28,  
 5 IC 4-22-2.1-5, or an executive order and revise the statements to  
 6 reflect any change in circumstances that affect the analysis. The  
 7 agency shall identify any alternative methods of achieving the  
 8 purpose of the rule that are less costly or less intrusive, or that  
 9 would otherwise minimize the economic impact of the proposed  
 10 rule on small businesses (as defined in IC 4-22-2.1-4) and other  
 11 regulated entities. The agency also shall consider the following:

12           (1) The nature of any complaints or comments received from  
 13 the public, including small businesses (as defined in  
 14 IC 4-22-2.1-4), concerning the rule or the rule's  
 15 implementation by the agency.

16           (2) The complexity of the rule, including any difficulties  
 17 encountered by:

18               (A) the agency in administering the rule; or

19               (B) small businesses (as defined in IC 4-22-2.1-4) or other  
 20 regulated persons in complying with the rule.

21           (3) The degree to which technology, economic conditions, or  
 22 other factors have changed in the area affected by the rule  
 23 since the last time the rule was reviewed.

24           (c) The agency shall prepare written findings concerning the  
 25 agency's determinations under this section.

26           Sec. 5. (a) If an agency elects to readopt a rule under this  
 27 chapter, the agency shall submit a notice of proposed readoption  
 28 to the publisher not later than the first regular business day in  
 29 September of the year preceding the year in which the rule expires  
 30 under this chapter for publication in the Indiana Register. A  
 31 separate notice must be published for each board or other person  
 32 or entity with rulemaking authority.

33           (b) The notice must include the following:

34               (1) A general description of the subject matter of all rules  
 35 proposed to be readopted.

36               (2) A listing of rules that are proposed to be readopted, listed  
 37 by their titles and subtitles only.

38               (3) A written comment period of thirty (30) days and  
 39 instructions on how to submit written comments to the  
 40 agency.

41               (4) A request for comments on whether specific rules should  
 42 be reviewed through the regular rulemaking process under



1           **IC 4-22-2-23 through IC 4-22-2-36 (as modified by IC 13-14-9,**  
 2           **when applicable).**

3           **(5) A summary of the agency's findings under section 4 of this**  
 4           **chapter.**

5           **(6) Any other information required by the publisher.**

6           **(c) The agency shall submit the material in the form required by**  
 7           **IC 4-22-2-20. The agency need not resubmit the documents**  
 8           **required by IC 4-22-2-21 if the publisher received a copy of the**  
 9           **documents when the rule was previously adopted or amended. The**  
 10           **publisher shall review the material submitted under this section**  
 11           **and determine the date that the publisher intends to include the**  
 12           **material in the Indiana Register. After:**

13           **(1) establishing the intended publication date; and**

14           **(2) receiving the material as required by this section;**

15           **the publisher shall assign a document control number, provide an**  
 16           **electronic mail authorization to proceed to the agency, and publish**  
 17           **the material on the intended publication date.**

18           **Sec. 6. (a) The agency shall prepare responses to all comments**  
 19           **received during the comment period.**

20           **(b) The agency, after considering the written comments and**  
 21           **responses, may do the following:**

22           **(1) Conduct one (1) or more additional comment periods in**  
 23           **the manner provided in section 5 of this chapter on one (1) or**  
 24           **more rules within the scope of the notice of proposed**  
 25           **readoption. If a person submits to the agency during the**  
 26           **initial comment period under section 5 of this chapter a**  
 27           **written request stating a basis for considering a particular**  
 28           **rule separately from other rules in the notice of proposed**  
 29           **readoption, the agency may not readopt that rule under this**  
 30           **chapter. The agency may readopt that rule with or without**  
 31           **changes only through a rulemaking action initiated under**  
 32           **IC 4-22-2-23 through IC 4-22-2-36 (as modified by IC 13-14-9,**  
 33           **when applicable).**

34           **(2) Readopt one (1) or more rules within the scope of the**  
 35           **notice of proposed readoption without change.**

36           **(3) Repeal one (1) or more rules within the scope of the notice**  
 37           **of proposed readoption, if the need for the rule no longer**  
 38           **exists. The adopting authority may repeal a rule without**  
 39           **additional comment periods under section 5 of this chapter.**

40           **Sec. 7. (a) The agency shall immediately submit the rulemaking**  
 41           **document containing the readopted rules to the publisher for filing**  
 42           **along with documentation demonstrating that the agency has**





1 readopted the rules. The agency shall submit material in the form  
 2 required by IC 4-22-2-20. The rulemaking document must make  
 3 reference to the document control number assigned by the  
 4 publisher.

5 (b) If the rulemaking document complies with this section, the  
 6 publisher shall:

7 (1) accept the rule for filing; and

8 (2) electronically record the date and time the rule is  
 9 accepted.

10 Sec. 8. A readopted rule that has been accepted for filing under  
 11 section 7 of this chapter takes effect on the latest of the following  
 12 dates:

13 (1) The date that is thirty (30) days from the date and time  
 14 that the rule was accepted for filing under section 7 of this  
 15 chapter.

16 (2) The effective date stated by the agency in the rule.

17 (3) The date of compliance with every requirement  
 18 established by law as a prerequisite to the readoption or  
 19 effectiveness of the rule.

20 Sec. 9. An agency that terminates a rulemaking action to  
 21 readopt a rule with or without amendments shall submit a notice  
 22 of withdrawal of the readoption rulemaking action in the manner  
 23 provided in IC 4-22-2-41.

24 Sec. 10. If a rule is not readopted and the governor finds that the  
 25 failure to readopt the rule causes an emergency to exist, the  
 26 governor may, by executive order issued before the rule's  
 27 expiration date, postpone the expiration date of the rule until a  
 28 date that is not later than one (1) year after the date specified in  
 29 section 1 of this chapter.

30 Sec. 11. The publisher shall remove all rules that have expired  
 31 under this chapter from the Indiana Administrative Code.  
 32 However, a rule that has expired but is readopted under this  
 33 chapter (or IC 4-22-2.5 (before its repeal) or IC 13-14-9.5 (before  
 34 its repeal)) may not be removed from the Indiana Administrative  
 35 Code.

36 SECTION 42. IC 12-10.5-1-9, AS AMENDED BY P.L.123-2006,  
 37 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 38 JULY 1, 2023]: Sec. 9. (a) Before finally adopting a rule under  
 39 IC 4-22-2 to implement this chapter, the division shall consult with and  
 40 fully consider any comments submitted by:

41 (1) caretakers providing care for a special needs individual under  
 42 this chapter;



1 (2) individuals with special needs receiving care from a caretaker  
 2 under this chapter;  
 3 (3) area agencies on aging;  
 4 (4) consumers and providers of home and community based  
 5 services under IC 12-10-10 and IC 12-10-11.5; and  
 6 (5) any other agency, volunteer group, faith based group, or  
 7 individual that the division considers appropriate;  
 8 to ensure that the rule complies with the requirements set forth in  
 9 subsection (b).

10 (b) Rules adopted under this chapter must:

11 (1) include protections for the rights, safety, and welfare of  
 12 individuals with special needs receiving care from a caretaker  
 13 under this chapter, including reasonable monitoring and reporting  
 14 requirements;

15 (2) serve distinct populations, including:

16 (A) the aged;

17 (B) persons with developmental disabilities; and

18 (C) persons with physical disabilities;

19 in a manner that recognizes, and appropriately responds to, the  
 20 particular needs of the population;

21 (3) not create barriers to the availability of home and community  
 22 based services under IC 12-10-10 and IC 12-10-11.5 by imposing  
 23 costly or unduly burdensome requirements on caretakers or other  
 24 service providers, including:

25 (A) requirements for proof of financial responsibility; and

26 (B) monitoring, enforcement, reporting, or other  
 27 administrative requirements; and

28 (4) otherwise comply with IC 12-10-10, IC 12-10-11.5, and this  
 29 chapter.

30 (c) Before submitting a rule adopted under this chapter to the  
 31 attorney general for final approval under IC 4-22-2-31, the division  
 32 shall submit to the publisher (as defined in IC 4-22-2-3(f)) for  
 33 publication in the Indiana Register the division's written response ~~under~~  
 34 ~~IC 4-22-2-23~~ to any comments received from the parties described in  
 35 subsection (a). Submissions to the publisher shall be made in the  
 36 electronic format specified by the publisher.

37 SECTION 43. IC 12-10.5-2-3, AS AMENDED BY P.L.123-2006,  
 38 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 39 JULY 1, 2023]: Sec. 3. (a) Before finally adopting a rule under  
 40 IC 4-22-2 to implement this chapter, the division shall consult with and  
 41 fully consider any comments submitted by:

42 (1) continuum of care providers providing care under this chapter;



1 (2) individuals receiving care under this chapter;  
 2 (3) area agencies on aging;  
 3 (4) consumers and providers of home and community based  
 4 services under IC 12-10-10 and IC 12-10-11.5; and  
 5 (5) any other agency, volunteer group, faith based group, or  
 6 individual that the division considers appropriate;  
 7 to ensure that the rule complies with the requirements set forth in  
 8 subsection (b).

9 (b) Rules adopted under this chapter must:

10 (1) include protections for the rights, safety, and welfare of  
 11 individuals receiving care under this chapter;

12 (2) serve distinct populations, including:

13 (A) the aged;

14 (B) persons with developmental disabilities; and

15 (C) persons with physical disabilities;

16 in a manner that recognizes, and appropriately responds to, the  
 17 particular needs of the population;

18 (3) not create barriers to the availability of home and community  
 19 based services under IC 12-10-10 and IC 12-10-11.5 by imposing  
 20 costly or unduly burdensome requirements on continuum of care  
 21 providers or other service providers, including:

22 (A) requirements for proof of financial responsibility; and

23 (B) monitoring, enforcement, reporting, or other  
 24 administrative requirements; and

25 (4) otherwise comply with IC 12-10-10, IC 12-10-11.5, and this  
 26 chapter.

27 (c) Before submitting a rule adopted under this chapter to the  
 28 attorney general for final approval under IC 4-22-2-31, the division  
 29 shall submit to the publisher (as defined in IC 4-22-2-3(f)) for  
 30 publication in the Indiana Register the division's written response ~~under~~  
 31 ~~IC 4-22-2-23~~ to any comments received from the parties described in  
 32 subsection (a). Submissions to the publisher shall be made in the  
 33 electronic format specified by the publisher.

34 SECTION 44. IC 13-14-9-0.2 IS ADDED TO THE INDIANA  
 35 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 36 [EFFECTIVE JULY 1, 2023]: **Sec. 0.2. This chapter (as effective**  
 37 **January 1, 2023) continues to apply after June 30, 2023, to a**  
 38 **rulemaking action that is commenced under this chapter before**  
 39 **July 1, 2023.**

40 SECTION 45. IC 13-14-9-1, AS AMENDED BY P.L.133-2012,  
 41 SECTION 89, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 42 JULY 1, 2023]: Sec. 1. (a) Except as provided in ~~sections 8 and section~~



1 14 of this chapter, this chapter applies to the following:

2 (1) The board.

3 (2) The underground storage tank financial assurance board  
4 established by IC 13-23-11-1.

5 (b) In addition to the requirements of IC 4-22-2 and IC 13-14-8, a  
6 board may not adopt a rule except in accordance with this chapter.

7 SECTION 46. IC 13-14-9-2 IS REPEALED [EFFECTIVE JULY 1,  
8 2023]. ~~Sec. 2: Except as provided in sections 4.5, 7, 8, and 14 of this~~  
9 ~~chapter, a board may not adopt a rule under this chapter until the board~~  
10 ~~has conducted at least two (2) public comment periods, each of which~~  
11 ~~must be at least thirty (30) days in length.~~

12 SECTION 47. IC 13-14-9-3, AS AMENDED BY P.L.100-2006,  
13 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
14 JULY 1, 2023]: Sec. 3. (a) ~~Except as provided in subsection (b);~~  
15 **Before publication of the notice described in IC 4-22-2-23,** the  
16 department ~~shall~~ **may** provide notice in the Indiana Register of ~~the first~~  
17 ~~a public comment period required by section 2 of this chapter.~~  
18 **regarding potential rulemaking.** A notice provided under this section  
19 must do the following:

20 (1) Identify the authority under which the proposed rule is to be  
21 adopted.

22 (2) Describe the subject matter and the basic purpose of the  
23 proposed rule. The description required by this subdivision must:

24 (A) list all alternatives being considered by the department at  
25 the time of the notice;

26 (B) state whether each alternative listed under clause (A)  
27 creates:

28 (i) a restriction or requirement more stringent than a  
29 restriction or requirement imposed under federal law; or

30 (ii) a restriction or requirement in a subject area in which  
31 federal law does not impose restrictions or requirements;

32 (C) state the extent to which each alternative listed under  
33 clause (A) differs from federal law;

34 (D) include any information known to the department about  
35 the potential fiscal impact of each alternative under clause (A)  
36 that creates:

37 (i) a restriction or requirement more stringent than a  
38 restriction or requirement imposed under federal law; or

39 (ii) a restriction or requirement in a subject area in which  
40 federal law does not impose restrictions or requirements;

41 and

42 (E) set forth the basis for each alternative listed under clause



- 1 (A).
- 2 (3) Describe the relevant statutory or regulatory requirements or
- 3 restrictions relating to the subject matter of the proposed rule that
- 4 exist before the adoption of the proposed rule.
- 5 (4) Request the submission of alternative ways to achieve the
- 6 purpose of the proposed rule.
- 7 (5) Request the submission of comments, including suggestions
- 8 of specific language for the proposed rule.
- 9 (6) Include a detailed statement of the issue to be addressed by
- 10 adoption of the proposed rule.
- 11 ~~(b) This section does not apply to rules adopted under~~
- 12 ~~IC 13-18-22-2, IC 13-18-22-3, or IC 13-18-22-4.~~
- 13 ~~(c) The notice required under subsection (a) shall be published~~
- 14 ~~electronically in the Indiana Register under procedures established by~~
- 15 ~~the publisher.~~
- 16 SECTION 48. IC 13-14-9-4, AS AMENDED BY P.L.218-2016,
- 17 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 18 JULY 1, 2023]: Sec. 4. (a) ~~The department shall provide notice in the~~
- 19 ~~Indiana Register of the second public comment period required by~~
- 20 ~~section 2 of this chapter. A notice provided under this section **In**~~
- 21 ~~**addition to the requirements of IC 4-22-2-23 and (if applicable)**~~
- 22 ~~**IC 4-22-2-24, the notice of public comment submitted by the**~~
- 23 ~~**department to the publisher** must do the following:~~
- 24 ~~(1) Contain the full text of the proposed rule; to the extent~~
- 25 ~~required under IC 4-22-2-24(c):~~
- 26 ~~(2) (1) Contain a summary of the response of the department to~~
- 27 ~~written comments submitted under section 3 of this chapter,~~
- 28 ~~during the first public comment period: **if applicable.**~~
- 29 ~~(3) (2) Request the submission of comments, including~~
- 30 ~~suggestions of specific amendments to the language contained in~~
- 31 ~~the proposed rule.~~
- 32 ~~(4) Contain the full text of the commissioner's written findings~~
- 33 ~~under section 7 of this chapter, if applicable:~~
- 34 ~~(5) (3) Identify each element of the proposed rule that imposes a~~
- 35 ~~restriction or requirement on persons to whom the proposed rule~~
- 36 ~~applies that:~~
- 37 ~~(A) is more stringent than a restriction or requirement imposed~~
- 38 ~~under federal law; or~~
- 39 ~~(B) applies in a subject area in which federal law does not~~
- 40 ~~impose a restriction or requirement.~~
- 41 ~~(6) (4) With respect to each element identified under subdivision~~
- 42 ~~(5); (3), identify:~~



- 1 (A) the environmental circumstance or hazard that dictates the  
 2 imposition of the proposed restriction or requirement to  
 3 protect human health and the environment;  
 4 (B) examples in which federal law is inadequate to provide the  
 5 protection referred to in clause (A); and  
 6 (C) the:  
 7 (i) estimated fiscal impact; and  
 8 (ii) expected benefits;  
 9 based on the extent to which the proposed rule is more  
 10 stringent than the restrictions or requirements of federal law,  
 11 or on the creation of restrictions or requirements in a subject  
 12 area in which federal law does not impose restrictions or  
 13 requirements.
- 14 ~~(7)~~ (5) For any element of the proposed rule that imposes a  
 15 restriction or requirement that is more stringent than a restriction  
 16 or requirement imposed under federal law or that applies in a  
 17 subject area in which federal law does not impose restrictions or  
 18 requirements, describe the availability for public inspection of all  
 19 materials relied upon by the department in the development of the  
 20 proposed rule, including, if applicable:  
 21 (A) health criteria;  
 22 (B) analytical methods;  
 23 (C) treatment technology;  
 24 (D) economic impact data;  
 25 (E) environmental assessment data;  
 26 (F) analyses of methods to effectively implement the proposed  
 27 rule; and  
 28 (G) other background data.
- 29 ~~(b)~~ The notice required under subsection (a):  
 30 ~~(1) shall be published electronically in the Indiana Register under~~  
 31 ~~procedures established by the publisher; and~~  
 32 ~~(2) if any element of the proposed rule to which the notice relates~~  
 33 ~~imposes a restriction or requirement that is more stringent than a~~  
 34 ~~restriction or requirement imposed under federal law; shall be~~  
 35 ~~submitted in an electronic format under IC 5-14-6 to the executive~~  
 36 ~~director of the legislative services agency; who shall present the~~  
 37 ~~notice to the legislative council established by IC 2-5-1.1-1.~~
- 38 ~~(c)~~ (b) If the notice provided by the department concerning a  
 39 proposed rule identifies ~~under subsection (a)(5);~~ an element of the  
 40 proposed rule that imposes a restriction or requirement more stringent  
 41 than a restriction or requirement imposed under federal law, the  
 42 proposed rule shall not become effective under this chapter until the



1 adjournment sine die of the regular session of the general assembly that  
2 begins after the department provides the notice.

3 ~~(d)~~ **(c)** ~~Subsections (b)(2) and (e) do~~ **Subsection (b) does** not  
4 prohibit or restrict the commissioner, the department, or the board  
5 from:

6 (1) adopting **emergency provisional** rules under IC 4-22-2-37.1;

7 (2) taking emergency action under IC 13-14-10; or

8 (3) temporarily:

9 (A) altering ordinary operating policies or procedures; or

10 (B) implementing new policies or procedures;

11 in response to an emergency situation.

12 SECTION 49. IC 13-14-9-4.2, AS AMENDED BY P.L.123-2006,  
13 SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
14 JULY 1, 2023]: Sec. 4.2. Not less than fourteen (14) days before the  
15 date of preliminary adoption of a proposed rule by a board, the  
16 department shall make available to the board the **fiscal impact**  
17 **statement latest version of the regulatory analysis** prepared by the  
18 ~~office of management and budget with respect to~~ **for** the proposed rule.  
19 ~~under IC 4-22-2-28(e).~~

20 SECTION 50. IC 13-14-9-4.5 IS AMENDED TO READ AS  
21 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4.5. (a) Except for a  
22 rule

23 ~~(+)~~ that has been preliminarily adopted by a board in a form that  
24 is:

25 ~~(A)~~ **(1)** identical to; or

26 ~~(B)~~ **(2)** not substantively different from;

27 the proposed rule published in a ~~second~~ notice under ~~section 4~~ of  
28 ~~this chapter~~; or

29 ~~(2) for which the commissioner has made a determination and~~  
30 ~~prepared written findings under section 7 or 8 of this chapter;~~

31 **IC 4-22-2-23 or (if applicable) IC 4-22-2-24;**

32 a board may not adopt a rule under this chapter until the board has  
33 conducted a ~~third~~ **an additional** public comment period that is at least  
34 ~~twenty-one (21)~~ **thirty (30)** days in length.

35 (b) The department shall publish notice of a ~~third~~ **an additional**  
36 public comment period with the

37 ~~(1)~~ text;

38 ~~(2)~~ summary; and

39 ~~(3)~~ fiscal analysis;

40 **information** that ~~are~~ **is** required to be published in the Indiana Register  
41 under section 5(a)(2) of this chapter.

42 ~~(c) The notice of a third public comment period that must be~~



1 published in the Indiana Register under subsection (b) must request the  
 2 submission of comments, including suggestions of specific  
 3 amendments, that concern only the portion of the preliminarily adopted  
 4 rule that is substantively different from the language contained in the  
 5 proposed rule published in a second notice under section 4 of this  
 6 chapter.

7 SECTION 51. IC 13-14-9-5, AS AMENDED BY P.L.123-2006,  
 8 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 9 JULY 1, 2023]: Sec. 5. (a) A board may not adopt a rule until all of the  
 10 following occur:

11 (1) The board holds a board meeting on the proposed rule.

12 (2) The department, after approval of the proposed rule by the  
 13 board under subsection (c), publishes the following information  
 14 in the Indiana Register as provided in IC 4-22-2-24(c):

15 (A) The full text of the proposed rule, including any  
 16 amendments arising from the comments received before or  
 17 during the meeting held under subdivision (1):

18 (B) A summary of the response of the department to all  
 19 comments received at the meeting held under subdivision (1):

20 (C) For a proposed rule with an estimated economic impact on  
 21 regulated entities that is greater than five hundred thousand  
 22 dollars (\$500,000); a copy of the office of management and  
 23 budget fiscal analysis required under IC 4-22-2-28: **required**  
 24 **by section 4 of this chapter. However, a notice of an**  
 25 **additional public comment period under section 4.5 of this**  
 26 **chapter must request the submission of comments,**  
 27 **including suggestions of specific amendments, that concern**  
 28 **only the portion of the preliminarily adopted rule that is**  
 29 **substantively different from the language contained in the**  
 30 **proposed rule published in the immediately preceding**  
 31 **notice under section 4 or (if applicable) 4.5 of this chapter.**

32 (3) The board, after publication of the notice under subdivision  
 33 (2), holds another board meeting on the proposed rule.

34 (4) If a ~~third~~ **an additional** public comment period is required  
 35 under section 4.5 of this chapter, the department publishes notice  
 36 of the ~~third~~ **additional** public comment period in the Indiana  
 37 Register.

38 (b) Board meetings held under subsection (a)(1) and (a)(3) shall be  
 39 conducted in accordance with IC 4-22-2-26(b) through  
 40 IC 4-22-2-26(d).

41 (c) At a board meeting held under subsection (a)(1), the board shall  
 42 determine whether the proposed rule will:





- 1 (1) proceed to publication under subsection (a)(2);  
 2 (2) be subject to additional comments under section ~~3~~ **4.5** of  
 3 this chapter; ~~considering any written finding made by the~~  
 4 ~~commissioner under section 7 or 8 of this chapter;~~ or  
 5 (3) be reconsidered at a subsequent board meeting in accordance  
 6 with IC 4-22-2-26(d).

7 SECTION 52. IC 13-14-9-6, AS AMENDED BY P.L.123-2006,  
 8 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 9 JULY 1, 2023]: Sec. 6. ~~In addition to the requirements of section 8 of~~  
 10 ~~this chapter;~~ The department shall include the following in the written  
 11 materials to be considered at the board meetings held under section  
 12 5(a)(1) and 5(a)(3) of this chapter:

- 13 (1) The full text of the proposed rule, as most recently prepared  
 14 by the department.  
 15 (2) The written responses of the department to all comments  
 16 received:  
 17 (A) during the immediately preceding comment period for a  
 18 board meeting held under section 5(a)(1) of this chapter;  
 19 (B) during the immediately preceding board meeting under  
 20 section 5(a)(1) of this chapter for a board meeting held under  
 21 section 5(a)(3) of this chapter if a ~~third~~ **an additional** public  
 22 comment period is not required under section 4.5 of this  
 23 chapter; or  
 24 (C) during:  
 25 (i) ~~a third~~ **an additional** public comment period that address  
 26 the portion of the preliminarily adopted rule that is  
 27 substantively different from the language contained in the  
 28 proposed rule published in a ~~second~~ notice under section 4  
 29 of this chapter; and  
 30 (ii) the immediately preceding board meeting held under  
 31 section 5(a)(1) of this chapter;  
 32 for a board meeting held under section 5(a)(3) of this chapter  
 33 if a ~~third~~ **an additional** public comment period is required  
 34 under section 4.5 of this chapter.

- 35 (3) The full text of the ~~office of management and budget fiscal~~  
 36 **latest version of regulatory** analysis if a ~~fiscal~~ analysis is  
 37 required under ~~IC 4-22-2-28.~~ **provided to the budget agency and**  
 38 **the office of management and budget under IC 4-22-2-22.8.**

39 SECTION 53. IC 13-14-9-7 IS REPEALED [EFFECTIVE JULY 1,  
 40 2023]. Sec. 7: (a) ~~Unless a board determines under section 5(c)(2) of~~  
 41 ~~this chapter that a proposed rule should be subject to additional~~  
 42 ~~comments; section 3 of this chapter does not apply to a rulemaking~~



1 action if the commissioner determines that the rulemaking policy  
 2 alternatives available to the department are so limited that the public  
 3 notice and comment period under section 3 of this chapter would  
 4 provide no substantial benefit to:

5 (1) the environment; or

6 (2) persons to be regulated or otherwise affected by the proposed  
 7 rule.

8 (b) If the commissioner makes a determination under subsection (a);  
 9 the commissioner shall prepare written findings under this section. The  
 10 full text of the commissioner's written findings shall be included in the  
 11 public notice provided under section 4 of this chapter.

12 SECTION 54. IC 13-14-9-8, AS AMENDED BY P.L.6-2012,  
 13 SECTION 103, IS AMENDED TO READ AS FOLLOWS  
 14 [EFFECTIVE JULY 1, 2023]: Sec. 8. (a) Except as provided in  
 15 subsection (g); unless a board determines that a proposed rule should  
 16 be subject to additional comments or makes a determination described  
 17 in subsection (f); sections 2 through 7 and sections 9 through 14 of this  
 18 chapter do not apply to a rulemaking action if the commissioner  
 19 determines that:

20 (1) the proposed rule constitutes:

21 (A) an adoption or incorporation by reference of a federal law;  
 22 regulation; or rule that:

23 (i) is or will be applicable to Indiana; and

24 (ii) contains no amendments that have a substantive effect  
 25 on the scope or intended application of the federal law or  
 26 rule;

27 (B) a technical amendment with no substantive effect on an  
 28 existing Indiana rule; or

29 (C) an amendment to an existing Indiana rule; the primary and  
 30 intended purpose of which is to clarify the existing rule; and

31 (2) the proposed rule is of such nature and scope that there is no  
 32 reasonably anticipated benefit to the environment or the persons  
 33 referred to in section 7(a)(2) of this chapter from the following:

34 (A) Exposing the proposed rule to diverse public comment  
 35 under section 3 or 4 of this chapter.

36 (B) Affording interested or affected parties the opportunity to  
 37 be heard under section 3 or 4 of this chapter.

38 (C) Affording interested or affected parties the opportunity to  
 39 develop evidence in the record collected under sections 3 and  
 40 4 of this chapter.

41 (b) If the commissioner makes a determination under subsection (a);  
 42 the commissioner shall prepare written findings under this section. The



- 1 full text of the commissioner's written findings shall be included in:
- 2 (1) the notice of adoption of the proposed rule; and
- 3 (2) the written materials to be considered by the board at the
- 4 public hearing held under this section.
- 5 (c) The notice of adoption of a proposed rule under this section
- 6 must:
- 7 (1) be published in the Indiana Register; and
- 8 (2) include the following:
- 9 (A) Draft rule language that includes the language described
- 10 in subsection (a)(1).
- 11 (B) A written comment period of at least thirty (30) days.
- 12 (C) A notice of public hearing before the appropriate board.
- 13 (d) The department shall include the following in the written
- 14 materials to be considered by the board at the public hearing referred
- 15 to in subsection (c):
- 16 (1) The full text of the proposed rule as most recently prepared by
- 17 the department.
- 18 (2) Written responses of the department to written comments
- 19 received during the comment period referred to in subsection (c).
- 20 (3) The commissioner's findings under subsection (b).
- 21 (e) At the public hearing referred to in subsection (c), the board
- 22 may:
- 23 (1) adopt the proposed rule;
- 24 (2) adopt the proposed rule with amendments;
- 25 (3) reject the proposed rule;
- 26 (4) determine that additional public comment is necessary; or
- 27 (5) determine to reconsider the proposed rule at a subsequent
- 28 board meeting.
- 29 (f) If the board determines under subsection (e) that additional
- 30 public comment is necessary, the department shall publish a second
- 31 notice in accordance with section 4 of this chapter and complete the
- 32 rulemaking in accordance with this chapter.
- 33 (g) If the board adopts the proposed rule with amendments under
- 34 subsection (e)(2), the amendments must meet the logical outgrowth
- 35 requirements of section 10 of this chapter, except that the board, in
- 36 determining whether the amendments are a logical outgrowth of
- 37 comments provided to the board, and in considering whether the
- 38 language of comments provided to the board fairly apprised interested
- 39 persons of the specific subjects and issues contained in the
- 40 amendments, shall consider the comments provided to the board at the
- 41 public hearing referred to in subsection (c)(2)(C).
- 42 (h) This subsection applies to that part of a rule adopted under this



1 section that directly corresponds to and is based on a federal law, rule,  
 2 or regulation that is stayed or repealed, invalidated, vacated, or  
 3 otherwise nullified by a legislative, an administrative, or a judicial  
 4 action described in subdivision (1), (2), or (3). If:

5 (1) a proposed rule is adopted by a board under subsection (e)(1)  
 6 based on a determination by the commissioner under subsection  
 7 (a)(1)(A) and the federal law, rule, or regulation on which the  
 8 adopted rule is based is later repealed or otherwise nullified by  
 9 legislative or administrative action, then that part of the adopted  
 10 rule that corresponds to the repealed or nullified federal law, rule,  
 11 or regulation is void as of the effective date of the legislative or  
 12 administrative action repealing or otherwise nullifying the federal  
 13 law, rule, or regulation;

14 (2) a board adopts a proposed rule under subsection (e)(1) that is  
 15 based on a determination by the commissioner under subsection  
 16 (a)(1)(A) and the federal law, rule, or regulation on which the  
 17 adopted rule is based is later invalidated, vacated, or otherwise  
 18 nullified by a judicial decree, order, or judgment of a state or  
 19 federal court whose decisions concerning such matters have force  
 20 and effect in Indiana:

21 (A) then that part of the rule that corresponds to the  
 22 invalidated, vacated, or otherwise nullified federal law, rule,  
 23 or regulation shall not be enforced by the commissioner or any  
 24 other person during the time in which an appeal of the judicial  
 25 decree, order, or judgment can be commenced or is pending;  
 26 and

27 (B) either:

28 (i) that part of the adopted rule that corresponds to the  
 29 invalidated, vacated, or otherwise nullified federal law, rule,  
 30 or regulation is void as of the date that the judicial decree,  
 31 order, or judgment becomes final and unappealable; or

32 (ii) enforcement of the adopted rule is restored if the judicial  
 33 decree, order, or judgment is reversed, vacated, or otherwise  
 34 nullified on appeal; and

35 (3) **If the commissioner determines that a federal law,**  
 36 **regulation, or rule:**

37 (1) that is the basis of a rule that is adopted under subsection  
 38 (e)(1) by the board; and based on a determination by the  
 39 commissioner under subsection (a)(1)(A)

40 (2) is stayed by an administrative or a judicial order pending  
 41 an administrative or a judicial action regarding the validity of  
 42 the federal law, rule, or regulation;



1 the commissioner may suspend the enforcement of that part of the  
 2 adopted rule that corresponds to the stayed federal law, rule, or  
 3 regulation while the stay is in force.

4 SECTION 55. IC 13-14-9-9 IS AMENDED TO READ AS  
 5 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 9. After complying  
 6 with sections ~~2~~ 4 through ~~8~~ 6 of this chapter, the board may, at the  
 7 board meeting held under section 5(a)(3) of this chapter:

8 (1) adopt a rule that is identical to the proposed rule published  
 9 under section 5(a)(2) of this chapter;

10 (2) adopt the proposed rule with amendments that meet the  
 11 criteria set forth in section ~~10~~ of this chapter;

12 (3) (2) recommend amendments to the proposed rule; that do not  
 13 meet the criteria set forth in section ~~10~~ of this chapter;

14 (4) (3) reject the proposed rule; or

15 (5) (4) reconsider the proposed rule at a subsequent board  
 16 meeting in accordance with IC 4-22-2-26(d).

17 SECTION 56. IC 13-14-9-10 IS REPEALED [EFFECTIVE JULY  
 18 1, 2023]. Sec. ~~10~~: (a) A board may amend a proposed rule at a board  
 19 meeting held under section 5(a)(3) of this chapter and adopt the  
 20 amended rule under section 9(2) of this chapter if the amendments are  
 21 a logical outgrowth of:

22 (1) the proposed rule as published under section 5(a)(2) of this  
 23 chapter; and

24 (2) any comments provided to the board at the meeting held under  
 25 section 5(a)(3) of this chapter.

26 (b) In determining, for the purposes of this section, whether an  
 27 amendment is a logical outgrowth of the proposed rule and any  
 28 comments, the board shall consider:

29 (1) whether the language of:

30 (A) the proposed rule as published under section 5(a)(2) of  
 31 this chapter; and

32 (B) any comments provided to the board at the meeting held  
 33 under section 5(a)(3) of this chapter;

34 fairly apprised interested persons of the specific subjects and  
 35 issues contained in the amendment; and

36 (2) whether the interested parties were allowed an adequate  
 37 opportunity to be heard by the board.

38 SECTION 57. IC 13-14-9-11 IS AMENDED TO READ AS  
 39 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 11. If the board  
 40 recommends amendments to a proposed rule under section ~~9(3)~~ 9(2) of  
 41 this chapter, the full text of the proposed rule and accompanying  
 42 amendments shall be published in accordance with section 5(a)(2) of



1 this chapter. After that publication, the board shall hold another board  
2 meeting on the proposed rule under section 5(a)(3) of this chapter.

3 SECTION 58. IC 13-14-9-12, AS AMENDED BY P.L.204-2007,  
4 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
5 JULY 1, 2023]: Sec. 12. The board may reject a proposed rule under  
6 section ~~9(4)~~ 9 of this chapter if one (1) of the following conditions  
7 exists:

8 ~~(1) The following occurs or has occurred:~~

9 ~~(A) under section 8 of this chapter, sections 3 and 4 of this~~  
10 ~~chapter did not apply to the proposed rule; and~~

11 ~~(B) either:~~

12 ~~(i) (1) The board determines that necessary amendments to~~  
13 ~~the proposed rule will affect persons that reasonably require~~  
14 ~~an opportunity to comment under section 4 of this chapter.~~  
15 ~~considering the criteria set forth in section 8(a)(2) of this~~  
16 ~~chapter; or~~

17 ~~(ii) (2) The board determines that due to the fundamental or~~  
18 ~~inherent structure or content of the proposed rule, the only~~  
19 ~~reasonably anticipated method of developing a rule~~  
20 ~~acceptable to the board is to require the department to~~  
21 ~~redraft the rule and to obtain the public comments under~~  
22 ~~section 4 of this chapter.~~

23 ~~(2) The following occurs or has occurred:~~

24 ~~(A) the proposed rule was subject to sections 3 and 4 of this~~  
25 ~~chapter; and~~

26 ~~(B) either:~~

27 ~~(i) the board makes a determination set forth in subdivision~~  
28 ~~(1)(B)(i) or (1)(B)(ii); or~~

29 ~~(ii) (3) The board determines that, due to a procedural or~~  
30 ~~other defect in the implementation of the applicable~~  
31 ~~rulemaking requirements, under sections 3 and 4 of this~~  
32 ~~chapter, an interested or affected party will be unfairly and~~  
33 ~~substantially prejudiced if the public comment period under~~  
34 ~~section 4 of this chapter is not again afforded and that no~~  
35 ~~reasonable alternative method to obtain public comments is~~  
36 ~~available to the interested or affected party other than the~~  
37 ~~public comment period under section 4 of this chapter.~~

38 SECTION 59. IC 13-14-9-14, AS AMENDED BY P.L.133-2012,  
39 SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
40 JULY 1, 2023]: Sec. 14. (a) Except as provided in subsection (g),  
41 sections 1 through 13 of this chapter do not apply to a rule adopted  
42 under this section.



1 (b) The board may use the procedures in this section to adopt a rule  
 2 to establish new water quality standards for a community served by a  
 3 combined sewer that has:

- 4 (1) an approved long term control plan; and  
 5 (2) an approved use attainability analysis that supports the use of  
 6 a CSO wet weather limited use subcategory established under  
 7 IC 13-18-3-2.5.

8 (c) After the department approves the long term control plan and use  
 9 attainability analysis, the department shall publish in the Indiana  
 10 Register a notice of adoption of a proposed rule to establish a CSO wet  
 11 weather limited use subcategory for the area defined by the approved  
 12 use attainability analysis.

13 (d) The notice under subsection (c) must include the following:

- 14 (1) Suggested rule language that amends the designated use to  
 15 allow for a CSO wet weather limited use subcategory in  
 16 accordance with IC 13-18-3-2.5.  
 17 (2) A written comment period of at least thirty (30) days.  
 18 (3) A notice of public hearing before the board.

19 (e) The department shall include the following in the written  
 20 materials to be considered by the board at the public hearing referred  
 21 to in subsection (d)(3):

- 22 (1) The full text of the proposed rule as most recently prepared by  
 23 the department.  
 24 (2) Written responses of the department to written comments  
 25 received during the comment period referred to in subsection  
 26 (d)(2).  
 27 (3) The letter prepared by the department approving the long term  
 28 control plan and use attainability analysis.

29 (f) At the public hearing referred to in subsection (d)(3), the board  
 30 may:

- 31 (1) adopt the proposed rule to establish a new water quality  
 32 standard amending the designated use to allow for a CSO wet  
 33 weather limited use subcategory;  
 34 (2) adopt the proposed rule with amendments;  
 35 (3) reject the proposed rule; or  
 36 (4) determine to reconsider the proposed rule at a subsequent  
 37 board meeting.

38 (g) If the board adopts the proposed rule with amendments under  
 39 subsection (f)(2), the amendments must meet the **substantially similar**  
 40 **or** logical outgrowth requirements of ~~section 10 of this chapter, except~~  
 41 ~~that~~ **IC 4-22-2-29(c)**. The board, in determining whether the  
 42 amendments are a logical outgrowth of comments provided to the



1 board, and in considering whether the language of comments provided  
 2 to the board fairly apprised interested persons of the specific subjects  
 3 and issues contained in the amendments, shall consider the comments  
 4 provided to the board at the public hearing referred to in subsection  
 5 (d)(3).

6 (h) The department shall submit a new water quality standard  
 7 established in a rule adopted under subsection (f) to the United States  
 8 Environmental Protection Agency for approval.

9 SECTION 60. IC 13-14-9-15 IS ADDED TO THE INDIANA  
 10 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 11 [EFFECTIVE JULY 1, 2023]: **Sec. 15. Rules adopted in accordance**  
 12 **with this chapter by the department of environmental management**  
 13 **or a board that has rulemaking authority under this title expire as**  
 14 **provided in IC 4-22-2.6.**

15 SECTION 61. IC 13-14-9-16 IS ADDED TO THE INDIANA  
 16 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 17 [EFFECTIVE JULY 1, 2023]: **Sec. 16. (a) For a rule document**  
 18 **subject to this chapter, the one (1) year period established under**  
 19 **IC 4-22-2-25 in which to adopt a rule and obtain the approval or**  
 20 **deemed approval of the governor commences on the date that the**  
 21 **initial comment period notice for the rule document is published in**  
 22 **the Indiana Register under section 4 of this chapter.**

23 (b) If an agency determines that a rule cannot be adopted within  
 24 one (1) year after the publication of the notice, the department  
 25 shall, before two hundred fifty (250) days following the publication  
 26 of the notice, notify the publisher by electronic means:

27 (1) the reasons why the rule was not adopted and the expected  
 28 date the rule will be completed; and

29 (2) the expected date the rule will be approved or deemed  
 30 approved by the governor or withdrawn under IC 4-22-2-41.

31 (c) If a rule is not approved before the later of:

32 (1) one (1) year after the department publishes the initial  
 33 notice of intent under this chapter; or

34 (2) the expected date contained in a notice concerning the rule  
 35 that is provided to the publisher under subsection (b);

36 a later approval or deemed approval is ineffective, and the rule  
 37 may become effective only through another rulemaking action  
 38 initiated under this chapter.

39 SECTION 62. IC 13-14-9.5 IS REPEALED [EFFECTIVE JULY 1,  
 40 2023]. (Expiration and Readoption of Administrative Rules).

41 SECTION 63. IC 13-19-3-3, AS AMENDED BY P.L.120-2022,  
 42 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE





1 UPON PASSAGE]: Sec. 3. (a) As used in this section and section 3.1  
 2 of this chapter, "coal combustion residuals" means fly ash, bottom ash,  
 3 boiler slag, and flue gas desulfurization materials generated from  
 4 burning coal for the purpose of generating electricity by electric  
 5 utilities and independent power producers.

6 (b) ~~As used in~~ **The following definitions apply throughout this**  
 7 section:

8 (1) "Federal CCR rule" refers to 40 CFR 257, Subpart D, the  
 9 federal standards for the disposal of coal combustion residuals in  
 10 landfills and surface impoundments.

11 (2) **"Legacy generation resource" means an electric**  
 12 **generating facility that is directly or indirectly owned by a**  
 13 **corporation that was originally formed for the purpose of**  
 14 **providing power to the federal government for use in the**  
 15 **nation's defense or in furtherance of national interests. The**  
 16 **term includes the Ohio Valley Electric Corporation.**

17 (c) The board ~~may~~ **shall** adopt rules under section 1(a)(1) of this  
 18 chapter **concerning coal combustion residuals. The rules adopted**  
 19 **under this subsection:**

20 (1) ~~that are~~ **shall be** consistent with the regulations of the United  
 21 States Environmental Protection Agency concerning standards for  
 22 the disposal of coal combustion residuals in landfills and surface  
 23 impoundments, as set forth in the federal CCR rule;

24 (2) **shall not impose a restriction or requirement that is more**  
 25 **stringent than the corresponding restriction or requirement**  
 26 **imposed under the federal CCR rule; and**

27 (3) **shall not impose a restriction or requirement that is not**  
 28 **imposed by the federal CCR rule.**

29 (d) The department shall do the following:

30 (1) Establish a state permit program under Section 2301 of the  
 31 federal Water Infrastructure Improvements for the Nation Act (42  
 32 U.S.C. 6945(d)) for the implementation in Indiana of the federal  
 33 CCR rule.

34 (2) Submit to the administrator of the United States  
 35 Environmental Protection Agency under 42 U.S.C. 6945(d)(1)(A)  
 36 evidence of the state permit program.

37 (3) Take other necessary or appropriate actions to obtain approval  
 38 of the state permit program.

39 (e) Not later than May 15, 2021, the department shall notify the  
 40 United States Environmental Protection Agency of its intention to  
 41 establish a state permit program described in subsection (d)(1) and to  
 42 seek approval of the state permit program under 42 U.S.C. 6945(d)(1).



- 1 (f) Under IC 4-22-2 and IC 13-14-9:  
 2 (1) the department shall initiate rulemaking for the establishment  
 3 of the state permit program not more than sixty (60) days after the  
 4 effective date of the SECTION of Senate Enrolled Act 271-2021  
 5 amending this section; and  
 6 (2) the board shall adopt a final rule for the establishment of the  
 7 state permit program not more than sixteen (16) months after  
 8 initiation of the rulemaking under subdivision (1).  
 9 (g) The state permit program established under this section must not  
 10 establish requirements for any surface impoundment of coal  
 11 combustion residuals unless and until the state permit program is  
 12 approved by the administrator of the United States Environmental  
 13 Protection Agency under 42 U.S.C. 6945(d)(1). **The authority of the**  
 14 **department to establish requirements under the state permit**  
 15 **program established under this section is the only authority the**  
 16 **department has to establish requirements for a surface**  
 17 **impoundment of coal combustion residuals located on the grounds**  
 18 **of a legacy generation resource.**  
 19 (h) The definitions set forth in Section 257.53 of the federal CCR  
 20 rule, as in effect January 1, 2021, apply throughout subsection (i).  
 21 (i) The department shall charge the following fees under the state  
 22 permit program established under this section:  
 23 (1) An initial one (1) time permit fee of twenty thousand five  
 24 hundred dollars (\$20,500) for each surface impoundment of coal  
 25 combustion residuals regulated under the state permit program.  
 26 (2) An annual fee of twenty thousand five hundred dollars  
 27 (\$20,500) for each surface impoundment of coal combustion  
 28 residuals regulated under the state permit program that has not  
 29 completed closure in accordance with Section 257.102 of the  
 30 federal CCR rule. The duty to pay the fee established by this  
 31 subdivision does not apply on an annual basis until three hundred  
 32 sixty-five (365) days after the initial one (1) time permit fee  
 33 established by subdivision (1) has been assessed.  
 34 (3) An annual fee of ten thousand dollars (\$10,000) for each  
 35 surface impoundment of coal combustion residuals regulated  
 36 under the state permit program that has been closed and for which  
 37 post-closure care has been initiated and is still required in  
 38 accordance with Section 257.104 of the federal CCR rule. The  
 39 duty to pay the fee established by this subdivision does not apply  
 40 on an annual basis until three hundred sixty-five (365) days after  
 41 the initial one (1) time permit fee established by subdivision (1)  
 42 has been assessed.



1 Fees collected under this subsection shall be deposited in the CCR  
2 program fund established by section 3.2 of this chapter.

3 (j) Not later than July 1, 2027, and before the end of each  
4 succeeding period of five (5) years, the board shall review the:

5 (1) costs to the department of operating the state permit program  
6 established under this section; and

7 (2) revenue from the fees charged under subsection (i);

8 as provided in IC 13-16-1-4. If the board determines that the revenue  
9 described in subdivision (2) is inadequate or excessive in relation to the  
10 costs described in subdivision (1), the board shall, under IC 13-16-1-2,  
11 change the amount of one (1) or more of the fees established under  
12 subsection (i).

13 (k) Upon the effective date that the board adopts rules to implement  
14 the federal CCR rule and subject to subsection (i), annual fees for CCR  
15 landfills that were previously regulated as restricted waste sites shall  
16 be deposited in the CCR program fund established by section 3.2 of  
17 this chapter.

18 SECTION 64. IC 14-10-2-5, AS AMENDED BY P.L.164-2020,  
19 SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
20 JULY 1, 2023]: Sec. 5. (a) The department may adopt ~~emergency~~ rules  
21 under ~~IC 4-22-2-37.~~ **IC 4-22-2** to carry out the duties of the  
22 department under the following:

23 (1) IC 14-9.

24 (2) This article.

25 (3) IC 14-11.

26 (4) IC 14-12-2.

27 (5) IC 14-14.

28 (6) IC 14-15.

29 (7) IC 14-17-3.

30 (8) IC 14-18, except IC 14-18-6 and IC 14-18-8.

31 (9) IC 14-19-1 and IC 14-19-8.

32 (10) IC 14-21.

33 (11) IC 14-22-3, IC 14-22-4, and IC 14-22-5.

34 (12) IC 14-23-1.

35 (13) IC 14-24.

36 (14) IC 14-25, except IC 14-25-8-3 and IC 14-25-13.

37 (15) IC 14-26.

38 (16) IC 14-27.

39 (17) IC 14-28.

40 (18) IC 14-29.

41 (19) IC 14-35-1, IC 14-35-2, and IC 14-35-3.

42 (20) IC 14-37.



- 1 (21) IC 14-38, except IC 14-38-3.
- 2 (b) ~~A~~ **An emergency rule** adopted under subsection (a) **(as effective**
- 3 **before July 1, 2023)** expires not later than one (1) year after the rule
- 4 is accepted for filing by the publisher of the Indiana Register.
- 5 (c) A person who violates:
- 6 (1) an emergency rule adopted by the department **under**
- 7 **IC 4-22-2-37.1 before July 1, 2023; or**
- 8 **(2) an interim rule adopted by the department under**
- 9 **IC 4-22-2-37.2 after June 30, 2023;**
- 10 **to carry out a provision described in subsection (a)** commits a Class
- 11 C infraction, unless otherwise specified under state law.
- 12 SECTION 65. IC 15-16-4-31, AS ADDED BY P.L.2-2008,
- 13 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 14 JULY 1, 2023]: Sec. 31. As used in this chapter, "pesticide for use by
- 15 prescription only" means any pesticide that:
- 16 (1) the board has found to be more hazardous than a restricted use
- 17 pesticide so that any specific use and application must be
- 18 determined and prescribed by a qualified pest management
- 19 specialist approved by the state chemist; **and**
- 20 **(2) is designated as a pesticide for use by prescription only in**
- 21 **a rule of the board or a law enacted by the general assembly.**
- 22 SECTION 66. IC 15-16-4-37, AS ADDED BY P.L.2-2008,
- 23 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 24 JULY 1, 2023]: Sec. 37. As used in this chapter, "restricted use
- 25 pesticide" means **the following:**
- 26 (1) Any pesticide classified as a restricted use pesticide by the
- 27 administrator of the United States Environmental Protection
- 28 Agency ~~or~~ **(as of March 31, 2023).**
- 29 **(2) A pesticide designated as a pesticide in a law enacted by**
- 30 **the general assembly.**
- 31 ~~(2)~~ **(3) Subject to section 50 of this chapter,** a pesticide that the
- 32 board has determined to be unduly hazardous to persons, animals,
- 33 plants, wildlife, waters, or lands other than the pests it is intended
- 34 to prevent, destroy, control, or mitigate.
- 35 **(4) All formulations containing methomyl (Chemical**
- 36 **Abstracts Service Reg. No. 16752-77-5).**
- 37 **(5) Any dicamba containing pesticide product that:**
- 38 **(A) contains a dicamba active ingredient concentration**
- 39 **greater than or equal to six and one-half percent (6.5%);**
- 40 **and**
- 41 **(B) is intended for agricultural production uses but is not**
- 42 **labeled solely for use on turf or other nonagricultural use**



1 sites.

2 SECTION 67. IC 15-16-4-50, AS AMENDED BY P.L.99-2012,  
3 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 2023]: Sec. 50. (a) The board may ~~adopt rules under IC 4-22-2~~  
5 ~~to do the following:~~

6 ~~(1) Establish a list of~~ **recommend to the general assembly the**  
7 **addition, deletion, or reclassification of pesticides by**  
8 **submitting in an electronic format under IC 5-14-6 a report**  
9 **of the recommendations to the legislative council. In making**  
10 **a determination to add or reclassify a pesticide as a restricted**  
11 **use pesticides and pesticide or pesticides pesticide** for use by  
12 prescription only for all of Indiana or designated areas within  
13 Indiana, if the board ~~finds~~ **must find** that the characteristics of a  
14 pesticide require that rules restricting the:

15 ~~(A) (1) sale;~~

16 ~~(B) (2) distribution; or~~

17 ~~(C) (3) use;~~

18 of the pesticide by any person are necessary to prevent undue hazards  
19 to persons, animals, wildlife, lands, or waters, other than the pests that  
20 they are intended to prevent, destroy, control, or mitigate. **After**  
21 **considering the factors enumerated in this subsection, the board**  
22 **shall make findings and recommendations concerning the control**  
23 **of the substance if it finds the substance. If any substance is**  
24 **designated or reclassified to a more restrictive schedule as a**  
25 **pesticide under federal law and notice is given to the board, the**  
26 **board shall recommend similar control of the substance under this**  
27 **article in the board's report to the general assembly, unless the**  
28 **board objects to inclusion or rescheduling. In that case, the board**  
29 **shall publish the reasons for objection and afford all interested**  
30 **parties an opportunity to be heard. At the conclusion of the**  
31 **hearing, the board shall publish its findings in the Indiana**  
32 **Register.**

33 (b) The board may adopt rules under IC 4-22-2 ~~to~~ do the  
34 following:

35 (1) **Reclassify a pesticide:**

36 (A) **from a more restrictive classification to a less**  
37 **restrictive classification; or**

38 (B) **as a substance that is not a pesticide;**

39 **if the board finds that the substance qualifies for**  
40 **reclassification under this chapter and that the same**  
41 **reclassification has been made in a classification under federal**  
42 **law. If the board reclassifies a substance under this**



1 subdivision, the board shall recommend the same  
 2 reclassification to the general assembly under subsection (a).  
 3 If the board objects to rescheduling or deletion of the  
 4 substance, the board shall notify the chair of the legislative  
 5 council not more than thirty (30) days after the federal law is  
 6 changed and the substance may not be reclassified or deleted  
 7 until the conclusion of the next complete session of the general  
 8 assembly. The notice from the board to the chair of the  
 9 legislative council must be published in the Indiana Register.  
 10 Notwithstanding a provision in this chapter that classifies a  
 11 pesticide in a more restrictive classification than a rule  
 12 adopted under this subdivision, a person who manufactures,  
 13 distributes, dispenses, possesses, or uses a pesticide in  
 14 compliance with the requirements applicable to the less  
 15 restrictive classification to which the pesticide is reclassified  
 16 under this subdivision does not commit a violation of law.  
 17 Notwithstanding a provision in this chapter that classifies a  
 18 substance as a pesticide, a person does not commit a violation  
 19 of law if the board has reclassified the pesticide as a substance  
 20 that is not a pesticide.

21 (2) Provide for the safe:

- 22 (A) handling;
- 23 (B) transportation;
- 24 (C) storage;
- 25 (D) display;
- 26 (E) distribution;
- 27 (F) disposal; and
- 28 (G) production;

29 of pesticide products and pesticide containers.

30 (3) Restrict or prohibit the use of certain types of containers or  
 31 packages for specific pesticides. The restrictions may apply to the:

- 32 (A) type of construction;
- 33 (B) strength; or
- 34 (C) size;

35 to alleviate danger of spillage, breakage, or misuse.

36 (b) The board may adopt by reference the restricted use  
 37 classification of a pesticide that is maintained by the United States  
 38 Environmental Protection Agency.

39 (c) The board may adopt rules **under IC 4-22-2** to do the following:

- 40 (1) Determine the time and conditions of the:
  - 41 (A) sale;
  - 42 (B) distribution; or



- 1 (C) use;  
 2 of pesticide products.  
 3 (2) Require that any or all pesticide products be purchased,  
 4 possessed, or used only under:  
 5 (A) permit;  
 6 (B) certificate;  
 7 (C) license; or  
 8 (D) registration;  
 9 of the state chemist or under certain conditions or in certain  
 10 quantities or concentrations.  
 11 (3) Require all persons issued:  
 12 (A) permits;  
 13 (B) certificates;  
 14 (C) licenses; or  
 15 (D) registrations;  
 16 under this subsection to maintain records as to the use of the  
 17 pesticide products.  
 18 **(d) A rule adopted under this chapter that becomes effective**  
 19 **after June 30, 2023, may not impose a restriction or requirement**  
 20 **more stringent than a restriction or requirement imposed under**  
 21 **federal law unless the restriction or requirement is specifically**  
 22 **authorized by Indiana law.**  
 23 **(e) The state chemist shall maintain a list of each class of**  
 24 **pesticides adopted by Indiana law or board rule on the website for**  
 25 **the state chemist. Failure to include a pesticide on the list does not**  
 26 **exempt a person from compliance with a law or rule for a pesticide**  
 27 **designated by law or rule.**  
 28 SECTION 68. IC 15-16-4-52, AS ADDED BY P.L.2-2008,  
 29 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 30 JULY 1, 2023]: Sec. 52. The state chemist may adopt rules under  
 31 IC 4-22-2 to administer this chapter, including rules providing for the  
 32 following:  
 33 (1) The collection and examination of samples of pesticide  
 34 products.  
 35 (2) Determining whether a pesticide product is highly toxic to  
 36 humans or wildlife.  
 37 (3) The issuance of permits to purchase, possess, or use  
 38 "restricted use pesticides" and "pesticides for use by prescription  
 39 only".  
 40 (4) Determining standards of coloring or discoloring for pesticide  
 41 products and to subject pesticide products to the requirements of  
 42 section 57 of this chapter.



1 **A rule described in this section that becomes effective after June**  
 2 **30, 2023, may not impose a restriction or requirement concerning**  
 3 **pesticides more stringent than a restriction or requirement**  
 4 **imposed under federal law unless the restriction or requirement is**  
 5 **specifically authorized by Indiana law.**

6 SECTION 69. IC 15-16-4-57, AS AMENDED BY P.L.99-2012,  
 7 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 8 JULY 1, 2023]: Sec. 57. Except as provided in section 58 of this  
 9 chapter, a person may not produce, distribute, display, sell, or offer for  
 10 sale within Indiana or deliver for transportation or transport in  
 11 intrastate commerce or between points within Indiana through any  
 12 point outside Indiana any of the following:

13 (1) Any pesticide product that has not been registered under  
 14 section 61 of this chapter.

15 (2) Any pesticide product if any of the claims made for it or any  
 16 of the directions for its use differ in substance from the  
 17 representations made in connection with its registration.

18 (3) A pesticide product if the composition of the product differs  
 19 from the composition as represented in connection with its  
 20 registration. However, at the discretion of the state chemist, a  
 21 change in the labeling or formula of a pesticide may be made  
 22 within a registration period without requiring reregistration of the  
 23 product.

24 (4) Any pesticide product (except a bulk pesticide or a pesticide  
 25 in a container designed and constructed to accommodate the  
 26 return and refill of the container) unless it is in the registrant's or  
 27 the manufacturer's unbroken immediate container, and there is  
 28 affixed to that container, and to any outside container or wrapper  
 29 of the retail package through which the required information on  
 30 the immediate container cannot be clearly read, a label bearing:

31 (A) the name and address of the manufacturer, registrant, or  
 32 person for whom manufactured;

33 (B) the name, brand, or trademark under which the pesticide  
 34 product is sold; and

35 (C) the net weight or measure of the content, subject, however,  
 36 to reasonable variations as the state chemist may permit.

37 (5) Any pesticide product that is adulterated or misbranded.

38 (6) Any pesticide product in containers violating rules adopted  
 39 under section ~~50(a)(3)~~ **50(b)(3)** of this chapter. Pesticides found  
 40 in containers that are unsafe due to damage may be seized and  
 41 impounded.

42 (7) A highly volatile herbicide except on written permission by





1 the state chemist.

2 (8) Any bulk pesticide unless it is accompanied in all transfers of  
3 custody or ownership by or held in storage vessels to which is  
4 affixed a label bearing the information specified in subdivision  
5 (4).

6 (9) Any pesticide that violates the Federal Insecticide, Fungicide,  
7 and Rodenticide Act (7 U.S.C. 136 et seq.) or regulations adopted  
8 under the Act.

9 SECTION 70. IC 15-16-5-72 IS ADDED TO THE INDIANA  
10 CODE AS A NEW SECTION TO READ AS FOLLOWS  
11 [EFFECTIVE JULY 1, 2023]: **Sec. 72. A rule adopted under this**  
12 **chapter that becomes effective after June 30, 2023, may not impose**  
13 **a restriction or requirement concerning pesticides more stringent**  
14 **than a restriction or requirement imposed under federal law unless**  
15 **the restriction or requirement is specifically authorized by Indiana**  
16 **law.**

17 SECTION 71. IC 25-1-5.3 IS ADDED TO THE INDIANA CODE  
18 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
19 JULY 1, 2023]:

20 **Chapter 5.3. Failure to Enact Licensure Rules**

21 **Sec. 1. The following definitions apply throughout this chapter:**

- 22 (1) "Agency" has the meaning set forth in IC 25-1-5-2.  
23 (2) "Applicant" has the meaning set forth in IC 25-1-5-11.  
24 (3) "Board" has the meaning set forth in IC 25-1-5-2.  
25 (4) "Compliant", with respect to a licensure rule, means a  
26 licensure rule that the agency or a board has adopted.  
27 (5) "Enactment date" means the date on which a statute  
28 requires rulemaking for a licensure rule to become effective  
29 or otherwise requires rulemaking to commence.  
30 (6) "Executive director" refers to the individual described in  
31 IC 25-1-5-5.  
32 (7) "Licensee" has the meaning set forth in IC 25-1-5-11.  
33 (8) "Licensure rule" means a rule that:  
34 (A) relates to the issuance of a license, certificate,  
35 registration, or permit, or a requirement or prerequisite  
36 for obtaining a license, or keeping a license in good  
37 standing; and  
38 (B) is required by statute to be adopted by the agency or a  
39 board.  
40 (9) "Material detriment" means:  
41 (A) an inability to obtain a license, certification, permit, or  
42 other credential from the agency or a board;



- 1                   **(B) an inability to:**
- 2                    (i) practice;
- 3                    (ii) perform a procedure; or
- 4                    (iii) engage in a particular professional activity in
- 5                    Indiana or another jurisdiction; or
- 6                   **(C) any other substantial burden to professional or**
- 7                    business interests.
- 8                   **(10) "Noncompliant", with respect to a licensure rule, means**
- 9                    a licensure rule that the agency or a board has not adopted as
- 10                   an interim rule under IC 4-22-2-37.2 within six (6) months of
- 11                   the enactment date.
- 12                   **Sec. 2. (a) If a licensee or applicant believes that the agency or**
- 13                    a board has failed to adopt a licensure rule within six (6) months of
- 14                    the enactment date, an applicant or licensee who has suffered a
- 15                    material detriment as a result of a noncompliant licensure rule
- 16                    may seek damages from the agency or board by bringing an action
- 17                    in a court of competent jurisdiction.
- 18                    **(b) A court shall not certify a class in any matter seeking**
- 19                    damages under this section.
- 20                    **(c) In a matter seeking damages under this section, a court may**
- 21                    order the following:
- 22                      **(1) An injunction requiring adoption of a compliant interim**
- 23                      **licensure rule not earlier than six (6) months from the date of**
- 24                      **the order.**
- 25                      **(2) Damages equal to the amount of the material detriment**
- 26                      **caused by the noncompliant licensure rule, including**
- 27                      **prospective damages through the date established under**
- 28                      **subdivision (1).**
- 29                      **(3) Court costs and attorney's fees.**
- 30                    **(d) IC 34-13-3 applies to an action brought under this section.**
- 31                    SECTION 72. IC 27-1-44.5-11, AS ADDED BY P.L.195-2021,
- 32                    SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 33                    JULY 1, 2023]: Sec. 11. (a) The department shall adopt ~~emergency~~
- 34                    rules under ~~IC 4-22-2-37.1~~ **IC 4-22-2** to implement this chapter. The
- 35                    rules must include a requirement that health payer data sources submit
- 36                    necessary information to the administrator. Rules enacted under this
- 37                    subsection must cover all health payer data sources as follows:
- 38                      (1) The department shall adopt rules that apply to health payers
- 39                      regulated under IC 27.
- 40                      (2) The office of the secretary of family and social services shall
- 41                      adopt rules that apply to health payers regulated under IC 12.
- 42                    (b) The department shall adopt ~~emergency~~ **provisional** rules under



1 IC 4-22-2-37.1 establishing a fee formula for data licensing and the  
2 collection and release of claims data.

3 (c) The department may impose a civil penalty on a health payer  
4 that is required to submit information under this chapter and fails to  
5 comply. A civil penalty collected under this section must be deposited  
6 in the department of insurance fund created by IC 27-1-3-28.

7 SECTION 73. IC 34-52-2-1.5 IS ADDED TO THE INDIANA  
8 CODE AS A **NEW SECTION TO READ AS FOLLOWS**  
9 **[EFFECTIVE JULY 1, 2023]: Sec. 1.5. (a) In a proceeding under**  
10 **IC 4-21.5-5 to judicially review a final order made by a state**  
11 **agency, the court shall apply the same standard as an**  
12 **administrative law judge under IC 4-21.5-3-27.5 regarding an**  
13 **order for the payment of attorney's fees.**

14 (b) **An order for the payment of attorney's fees under this**  
15 **section is not subject to sections 2 and 4 of this chapter.**

16 SECTION 74. **[EFFECTIVE UPON PASSAGE] (a) After June 30,**  
17 **2023, a rule may be adopted as a provisional rule only for the**  
18 **purposes and through the procedures in IC 4-22-2-37.1 (as effective**  
19 **after June 30, 2023). Any additional authority in a statute outside**  
20 **IC 4-22 to adopt rules through the emergency rulemaking**  
21 **procedures in IC 4-22-2-37.1 (as effective before July 1, 2023, or**  
22 **after June 30, 2023) is void. The code revision commission shall**  
23 **provide in calendar year 2023 for the preparation of a bill for**  
24 **introduction in the 2024 regular session of the general assembly**  
25 **that removes language outside IC 4-22 permitting the adoption of**  
26 **emergency rules.**

27 (b) **This SECTION expires January 1, 2024.**

28 SECTION 75. **An emergency is declared for this act.**



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1623, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, between lines 35 and 36, begin a new paragraph and insert:

"SECTION 4. IC 4-22-2-0.1, AS AMENDED BY P.L.53-2014, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 0.1. **(a)** The amendments made to this chapter by P.L.44-1995 apply as follows:

- (1) The amendments made to sections 13, 19, 23, 25, and 28 of this chapter apply to a rulemaking action that commences after June 30, 1995.
- (2) The addition of sections 23.1 and 46 (repealed) of this chapter applies to a rulemaking action that commences after June 30, 1995.

**(b) This chapter (as effective January 1, 2023) continues to apply after June 30, 2023, to a rulemaking action that is commenced under this chapter before July 1, 2023, and is pending on July 1, 2023."**

Page 4, line 36, delete "or 37.2" and insert "**37.2, or 37.3**".

Page 4, line 40, delete "or 37.2" and insert "**37.2, or 37.3**".

Page 5, line 14, after "17.5." insert "**(a)**".

Page 5, between lines 19 and 20, begin a new paragraph and insert:

**"(b) If requested in the manner specified by the legislative council or the personnel subcommittee of the legislative council acting for the legislative council, an agency shall provide to the legislative services agency any data, studies, or analyses relied on by the agency to develop a regulatory analysis or a revised regulatory analysis. The agency shall comply with any policies adopted by the legislative council or the personnel subcommittee of the legislative council governing the format, timing, and manner of delivery of the data, studies, or analyses."**

Page 7, line 5, after "or section" insert "**37.2 or**".

Page 7, line 11, delete "the first" and insert "**a**".

Page 7, line 12, delete "23" and insert "**23, 37.2,**".

Page 7, line 32, reset in roman "**or**".

Page 7, line 33, delete "**or**".

Page 7, delete line 34.

Page 8, line 29, delete "analysis, including supporting" and insert "**analysis**".



Page 8, line 30, delete "data,".

Page 9, line 42, after "chapter," insert "if".

Page 10, line 1, delete "may" and insert "**elects to adopt a rule subject to section 23 of this chapter or IC 13-14-9, the agency shall**".

Page 11, line 4, after "budget" insert "**a revised regulatory analysis with**".

Page 11, line 28, delete "analysis, including" and insert "**analysis**".

Page 11, line 29, delete "supporting data and studies,".

Page 14, line 35, delete "(including any".

Page 14, delete line 36.

Page 14, line 37, delete "referenced in the regulatory analysis)".

Page 15, line 23, after "A" insert "**summary of the written comments received by the agency during the first comment period and a**".

Page 17, line 3, strike "of".

Page 17, line 3, reset in roman "in the Indiana Register".

Page 17, line 5, after "chapter" insert "**of**".

Page 17, between lines 28 and 29, begin a new paragraph and insert:

"SECTION 18. IC 4-22-2-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 27. The individual or group of individuals who will finally adopt the rule under section 29 of this chapter shall fully consider **written** comments received **by the agency during each comment period and comments received** at the public hearing required by section 26 of this chapter and may consider any other information before adopting the rule. Attendance at the public hearing or review of a written record or summary of the public hearing is sufficient to constitute full consideration.

SECTION 19. IC 4-22-2-27.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 27.5. In addition to the information submitted to the attorney general under section 31 of this chapter, to the governor under section 33 of this chapter, and to the publisher under section 35 of this chapter, an agency shall submit to the attorney general, the governor, and the publisher a summary of the comments received by the agency during each comment period and public hearing under sections 23, 24, and 26 of this chapter or IC 13-14-9 and a summary of the response of the agency to the comments. The publisher shall publish the summaries with the final adopted and approved rule.**"

Page 26, line 7, delete "the approval of" and insert "**a determination from**".



Page 28, between lines 25 and 26, begin a new line blocked left and insert:

**"A notice of objection to an emergency rule by the attorney general must include findings that explain the basis for the determination. The notice of objection shall be provided to the agency in an electronic format."**

Page 28, line 42, after "authority" insert **"with a single comment period of at least thirty (30) days in length"**.

Page 29, line 19, delete "the approval of" and insert **"a determination from"**.

Page 29, delete lines 29 through 36, begin a new paragraph and insert:

**"(c) An agency shall notify the public of its intention to adopt an interim rule by complying with the publication requirements in this section. The agency shall cause a notice of a public comment period and the full text of the agency's proposed interim rule (excluding the full text of a matter incorporated by reference under section 21 of this chapter) to be published once in the Indiana Register. The publisher shall review materials submitted under this section and determine the date that the publisher intends to include the material in the Indiana Register. After establishing the intended publication date and receiving the public comment period information from the agency, the publisher shall provide a written or an electronic mail authorization to proceed to the agency.**

**(d) The agency shall include the following in the notice of the public comment period:**

**(1) A general description of the subject matter of the proposed interim rule, including the document control number.**

**(2) A statement justifying any requirement or cost that is:**

**(A) imposed on a regulated entity under the interim rule; and**

**(B) not expressly required by the statute authorizing the agency to adopt rules or any other state or federal law.**

**The statement required under this subdivision must include a reference to any data, studies, or analyses relied upon by the agency in determining that the imposition of the requirement or cost is necessary and where and how a person may inspect and copy or electronically download the data, studies, or analyses.**

**(3) A date that is thirty (30) days after the notice is published in the Indiana Register by which written comments are due and a statement explaining that any person may submit**



written comments concerning the proposed expedited rule during the public comment period and instructions on when, where, and how the person may submit written comments. However, inadequacy or insufficiency of the subject matter description under subdivision (1) or a statement of justification under subdivision (2) in a notice does not invalidate a rulemaking action. An agency may continue the comment period by publishing a subsequent notice in the Indiana Register extending the comment period.

(e) Before adopting the interim rule, the agency shall prepare a written response to comments received by the agency, including the reasons for rejecting any recommendations made in the comments.

(f) After an agency has completed the initial public comment period of at least thirty (30) days in length and complied with subsection (e), the agency may:

- (1) adopt a rule that is identical to a proposed interim rule published in the Indiana Register under this section; or
- (2) adopt a revised version of a proposed interim rule published under this section and include provisions that did not appear in the initially published proposed version.

An agency may not adopt an interim rule that substantially differs from the version of the proposed interim rule published in the Indiana Register under this section, unless it is a logical outgrowth of any proposed interim rule as supported by any written comments submitted during the public comment period.

(g) After the agency adopts the interim rule, the agency shall submit the following to the publisher for filing:"

Page 29, between lines 39 and 40, begin a new line block indented and insert:

**"(2) A summary of the comments received by the agency during the comment period and the agency's response to the comments."**

Page 29, line 40, delete "(2)" and insert "(3)".

Page 30, line 1, delete "(3)" and insert "(4)".

Page 30, line 3, delete "(4)" and insert "(5)".

Page 30, line 5, delete "The".

Page 30, delete lines 6 through 7.

Page 30, line 8, delete "governor."

Page 30, line 10, delete "(e)" and insert "(h)".

Page 30, line 10, delete "(d)" and insert "(g)".

Page 30, line 17, delete "(f)" and insert "(i)".

Page 30, line 22, delete "(e)." and insert "(h)."



Page 30, delete lines 30 through 38, begin a new paragraph and insert:

**"(j) An agency may amend an interim rule with another interim rule by following the procedures in this section for adoption of an interim rule. An interim rule and all subsequent rules on the same subject adopted under section 37.1 or 37.3 of this chapter or this section expire not later than four hundred twenty-five (425) days after the initial interim rule is accepted for filing under subsection (h). The interim rule, including all subsequent interim rules adopted under section 37.1 or 37.3 of this chapter or this section on the same subject, may not be subsequently extended under section 37.1 or 37.3 of this chapter or this section after four hundred twenty-five (425) days."**

Page 30, line 39, delete "(h)" and insert "**(k)**".

Page 30, line 39, delete "(i)," and insert "**(I)**".

Page 31, line 1, delete "(e)." and insert "**(h)**".

Page 31, line 7, delete "(i)" and insert "**(I)**".

Page 31, line 8, delete "emergency" and insert "**interim**".

Page 31, line 8, delete "(h)" and insert "**(k)**".

Page 31, line 9, delete "emergency" and insert "**interim**".

Page 31, between lines 11 and 12, begin a new line blocked left and insert:

**"A notice of objection to an interim rule by the attorney general must include findings that explain the basis for the determination. The notice of objection shall be provided to the agency in an electronic format."**

Page 31, line 19, delete "on a subject for which the" and insert "**described in IC 4-22-2.3**".

Page 31, line 20, delete "agency has rulemaking authority".

Page 31, line 24, delete "is:" and insert "**is appropriate for a rule described in IC 4-22-2.3**".

Page 31, delete lines 25 through 29.

Page 31, line 30, delete "the approval of" and insert "**a determination from**".

Page 31, line 31, delete "office of management and budget" and insert "**governor**".

Page 31, line 34, delete "office of management and budget" and insert "**governor**".

Page 31, line 35, delete "office of management and budget." and insert "**governor**".

Page 31, line 36, delete "office of management and budget" and insert "**governor**".





Page 32, line 26, after "A" insert **"date that is thirty (30) days after the notice is published in the Indiana Register by which written comments are due and a"**.

Page 32, line 33, after "action." insert **"An agency may continue the comment period by publishing a subsequent notice in the Indiana Register extending the comment period."**

Page 32, line 38, delete "a public comment period of" and insert **"the comment period under this section"**.

Page 32, line 39, delete "at least thirty (30) days in length".

Page 33, line 24, after "subsection." insert **"The substantive text of the adopted expedited rule must be substantially similar to the text of the proposed expedited rule submitted to the governor. An expedited rule may suspend but not repeal a rule approved by the governor under section 34 of this chapter."**

Page 34, line 4, delete "expires:" and insert **"expires as provided in IC 4-22-2.3. An agency may continue an expedited rule for an additional period after it would otherwise expire only as permitted in IC 4-22-2.3."**

Page 34, delete lines 5 through 8.

Page 34, line 20, delete "emergency" and insert **"expedited"**.

Page 34, line 21, delete "emergency" and insert **"expedited"**.

Page 34, between lines 23 and 24, begin a new line blocked left and insert:

**"A notice of objection to an expedited rule by the attorney general must include findings that explain the basis for the determination. The notice of objection shall be provided to the agency in an electronic format."**

Page 40, line 7, delete "section sets" and insert **"subsection and subsection (b) set"**.

Page 41, line 17, after "IC 4-22-2-37.3." insert **"An expedited rule described in this section may not be continued in another expedited rule after the expiration of the initial expedited rule."**

Page 41, line 23, after "Register." insert **"An expedited rule described in this section may be continued in another expedited rule only if the governor determines under IC 4-22-2-37.3(b) that the policy options available to the agency are so limited that use of the additional notice, comment, and review procedures in IC 4-22-2-23 through IC 4-22-2-36 would provide no benefit to persons regulated or otherwise affected by the rule."**

Page 41, line 30, after "Register." insert **"An expedited rule described in this section may not be continued in another expedited rule after the expiration of the initial expedited rule."**



Page 41, line 35, after "Register." insert **"An expedited rule described in this section may not be continued in another expedited rule after the expiration of the initial expedited rule."**

Page 42, line 12, delete "that" and insert **"after"**.

Page 42, line 15, after "under" insert **"IC 24-4.4-1-101 (licensing system for creditors and mortgage loan originators) or"**.

Page 42, between lines 19 and 20, begin a new paragraph and insert:

**"(c) The department of financial institutions shall adopt rules under IC 4-22-2-37.3 in the same manner provided in subsection (a) for the adjustments required under IC 24-9-2-8 concerning high cost home loans. The rule expires not later than January 1 of the next odd-numbered year after the department of financial institutions is required to issue the rule.**

**(d) The department of financial institutions may adopt rules described in 34-55-10-2 (bankruptcy exemptions; limitations) and IC 34-55-10-2.5 in conformity with the procedures in IC 4-22-2-23 through IC 4-22-2-36 or the expedited procedures in IC 4-22-2-37.3. A rule adopted under IC 4-22-2-37.3 expires not later than two (2) years after the adopted rule is accepted for filing by the publisher of the Indiana Register.**

**(e) An expedited rule described in this section may be continued in another expedited rule only if the governor determines under IC 4-22-2-37.3(b) that the policy options available to the agency are so limited that use of the additional notice, comment, and review procedures in IC 4-22-2-23 through IC 4-22-2-36 would provide no benefit to persons regulated or otherwise affected by the rule."**

Page 42, line 37, after "Register." insert **"An expedited rule described in this section may not be continued in another expedited rule after the expiration of the initial expedited rule."**

Page 45, line 16, after "publisher" insert **"not later than the first regular business day in September of the year preceding the year in which the rule expires under this chapter"**.

Page 45, line 24, delete "at least".

Page 46, line 12, after "period" insert **"under section 5 of this chapter"**.

Page 55, delete lines 31 through 41, begin a new line block indented and insert:

**"(1) that has been preliminarily adopted by a board in a form that is:**

**(A) identical to; or**

**(B) not substantively different from;**

**the proposed rule published in a second notice under section 4 of**



this chapter; or

(2) for which the commissioner has made a determination and prepared written findings under section 7 or 8 of this chapter; a board may not adopt a rule under this chapter until the board has conducted a third public comment period that is at least ~~twenty-one~~ **(21) thirty (30)** days in length."

Page 57, line 15, reset in roman "In addition to the requirements of section 8 of".

Page 57, line 16, reset in roman "this chapter,".

Page 57, line 16, delete "The" and insert "the".

Page 58, between lines 5 and 6, begin a new paragraph and insert:

"SECTION 47. IC 13-14-9-16 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **For a rule document subject to this chapter, the one (1) year period established under IC 4-22-2-25 in which to adopt a rule and obtain the approval or deemed approval of the governor commences on the date that the initial comment period notice for the rule document is published in the Indiana Register under section 3 of this chapter, (if the section 3 comment period is waived under section 7 of this chapter) section 4 of this chapter, section 8 of this chapter, or section 14 of this chapter (as applicable). If an agency determines that a rule cannot be adopted within one (1) year after the publication of the notice, the agency shall, before two hundred fifty (250) days following the publication of the notice, notify the publisher by electronic means:**

**(1) the reasons why the rule was not adopted and the expected date the rule will be completed; and**

**(2) the expected date the rule will be approved or deemed approved by the governor or withdrawn under IC 4-22-2-41.**

**(b) If a rule is not approved before the later of:**

**(1) one (1) year after the agency publishes the initial notice of intent under this chapter; or**

**(2) the expected date contained in a notice concerning the rule that is provided to the publisher under subsection (a);**

**a later approval or deemed approval is ineffective, and the rule may become effective only through another rulemaking action initiated under this chapter."**

Page 58, between lines 7 and 8, begin a new paragraph and insert:

"SECTION 49. IC 13-19-3-3, AS AMENDED BY P.L.120-2022, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) As used in this section and section 3.1 of this chapter, "coal combustion residuals" means fly ash, bottom ash,



boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers.

(b) ~~As used in~~ **The following definitions apply throughout this section:**

(1) "Federal CCR rule" refers to 40 CFR 257, Subpart D, the federal standards for the disposal of coal combustion residuals in landfills and surface impoundments.

(2) **"Legacy generation resource" means an electric generating facility that is directly or indirectly owned by a corporation that was originally formed for the purpose of providing power to the federal government for use in the nation's defense or in furtherance of national interests. The term includes the Ohio Valley Electric Corporation.**

(c) The board ~~may~~ **shall** adopt rules under section 1(a)(1) of this chapter **concerning coal combustion residuals. The rules adopted under this subsection:**

(1) ~~that are shall be~~ consistent with the regulations of the United States Environmental Protection Agency concerning standards for the disposal of coal combustion residuals in landfills and surface impoundments, as set forth in the federal CCR rule;

(2) **shall not impose a restriction or requirement that is more stringent than the corresponding restriction or requirement imposed under the federal CCR rule; and**

(3) **shall not impose a restriction or requirement that is not imposed by the federal CCR rule.**

(d) The department shall do the following:

(1) Establish a state permit program under Section 2301 of the federal Water Infrastructure Improvements for the Nation Act (42 U.S.C. 6945(d)) for the implementation in Indiana of the federal CCR rule.

(2) Submit to the administrator of the United States Environmental Protection Agency under 42 U.S.C. 6945(d)(1)(A) evidence of the state permit program.

(3) Take other necessary or appropriate actions to obtain approval of the state permit program.

(e) Not later than May 15, 2021, the department shall notify the United States Environmental Protection Agency of its intention to establish a state permit program described in subsection (d)(1) and to seek approval of the state permit program under 42 U.S.C. 6945(d)(1).

(f) Under IC 4-22-2 and IC 13-14-9:

(1) the department shall initiate rulemaking for the establishment



of the state permit program not more than sixty (60) days after the effective date of the SECTION of Senate Enrolled Act 271-2021 amending this section; and

(2) the board shall adopt a final rule for the establishment of the state permit program not more than sixteen (16) months after initiation of the rulemaking under subdivision (1).

(g) The state permit program established under this section must not establish requirements for any surface impoundment of coal combustion residuals unless and until the state permit program is approved by the administrator of the United States Environmental Protection Agency under 42 U.S.C. 6945(d)(1). **The authority of the department to establish requirements under the state permit program established under this section is the only authority the department has to establish requirements for a surface impoundment of coal combustion residuals located on the grounds of a legacy generation resource.**

(h) The definitions set forth in Section 257.53 of the federal CCR rule, as in effect January 1, 2021, apply throughout subsection (i).

(i) The department shall charge the following fees under the state permit program established under this section:

(1) An initial one (1) time permit fee of twenty thousand five hundred dollars (\$20,500) for each surface impoundment of coal combustion residuals regulated under the state permit program.

(2) An annual fee of twenty thousand five hundred dollars (\$20,500) for each surface impoundment of coal combustion residuals regulated under the state permit program that has not completed closure in accordance with Section 257.102 of the federal CCR rule. The duty to pay the fee established by this subdivision does not apply on an annual basis until three hundred sixty-five (365) days after the initial one (1) time permit fee established by subdivision (1) has been assessed.

(3) An annual fee of ten thousand dollars (\$10,000) for each surface impoundment of coal combustion residuals regulated under the state permit program that has been closed and for which post-closure care has been initiated and is still required in accordance with Section 257.104 of the federal CCR rule. The duty to pay the fee established by this subdivision does not apply on an annual basis until three hundred sixty-five (365) days after the initial one (1) time permit fee established by subdivision (1) has been assessed.

Fees collected under this subsection shall be deposited in the CCR program fund established by section 3.2 of this chapter.



(j) Not later than July 1, 2027, and before the end of each succeeding period of five (5) years, the board shall review the:

(1) costs to the department of operating the state permit program established under this section; and

(2) revenue from the fees charged under subsection (i);

as provided in IC 13-16-1-4. If the board determines that the revenue described in subdivision (2) is inadequate or excessive in relation to the costs described in subdivision (1), the board shall, under IC 13-16-1-2, change the amount of one (1) or more of the fees established under subsection (i).

(k) Upon the effective date that the board adopts rules to implement the federal CCR rule and subject to subsection (i), annual fees for CCR landfills that were previously regulated as restricted waste sites shall be deposited in the CCR program fund established by section 3.2 of this chapter.

SECTION 50. IC 25-1-5.3 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]:

**Chapter 5.3. Failure to Enact Licensure Rules**

**Sec. 1. The following definitions apply throughout this chapter:**

(1) "Agency" has the meaning set forth in IC 25-1-5-2.

(2) "Board" has the meaning set forth in IC 25-1-5-2.

(3) "Compliant", with respect to a licensure rule, means a licensure rule that the agency or a board has adopted.

(4) "Enactment date" means the date on which a statute requires rulemaking for a licensure rule to commence.

(5) "Executive director" refers to the individual described in IC 25-1-5-5.

(6) "Licensee" has the meaning set forth in IC 25-1-5-11.

(7) "Licensure rule" means a rule that:

(A) relates to the issuance of a license, certificate, registration, or permit, or a requirement or prerequisite for obtaining a license, or keeping a license in good standing; and

(B) is required by statute to be adopted by the agency or a board.

(8) "Noncompliant", with respect to a licensure rule, means a licensure rule that the agency or a board has not adopted within eighteen (18) months of the enactment date.

**Sec. 2. (a) If a licensee believes that the agency or a board has failed to adopt a licensure rule within eighteen (18) months of the enactment date, the licensee may request in writing that the**



executive director determine that the licensure rule is noncompliant. The executive director shall issue the determination of noncompliance or compliance in writing.

(b) If the executive director determines that the licensure rule is noncompliant, the licensee is entitled to the relief described in section 3 of this chapter.

(c) If:

(1) the executive director determines that the licensure rule is compliant; or

(2) at least thirty (30) days have passed since the licensee requested the executive director to confirm that the licensure rule is noncompliant and the executive director has not issued a determination;

the licensee may request that the governor or the attorney general determine that the licensure rule is a noncompliant. A licensee may not request that both the governor and the attorney general make a determination under this subsection.

(d) If the governor or the attorney general determines that the licensure rule is noncompliant, the licensee is entitled to the relief described in section 3 of this chapter.

Sec. 3. (a) If the executive director, governor, or attorney general determines that a licensure rule is noncompliant, the licensee:

(1) is not required to pay the license fee to which the licensure rule relates from the enactment date to the date the licensure rule becomes compliant (if applicable); and

(2) is entitled to a refund of any license fee to which the licensure rule relates from the enactment date to the date the licensure rule becomes compliant (if applicable).

(b) The failure to pay a license fee as authorized under this section does not affect the validity of the license.

Sec. 4. (a) If the executive director has determined under section 2 of this chapter that a licensure rule is noncompliant, and the agency later adopts a licensure rule, the executive director may, upon the request of any person, including the executive director, make a new determination concerning the licensure rule. The executive director shall issue the determination in writing.

(b) If the executive director determines that the licensure rule is compliant, a licensee who disagrees with the determination may request, not later than thirty (30) days after issuance of the new determination, that the governor or attorney general review the determination. The licensee may not request that both the



**governor and the attorney general review the determination. If the governor or attorney general determines that the licensure rule is noncompliant, the determination of the governor or attorney general controls.**

**Sec. 5. If the governor or attorney general determined that a licensure rule was noncompliant under section 2 of this chapter, and the agency later adopts a licensure rule, upon the request of any person, the governor or attorney general may make a new determination concerning the licensure rule. The governor or attorney general shall issue the determination in writing.**

**Sec. 6. If the executive director, under section 4 of this chapter, or the governor or attorney general, under section 5 of this chapter, determines that a formerly noncompliant licensure rule is now compliant, a licensee is required to pay the license fee to which the licensure rule relates, beginning:**

- (1) from the date the new determination was issued; or**
- (2) if the new determination was issued by the executive director under section 4(a) of this chapter and the licensee sought review by the governor or attorney general under section 4(b) of this chapter, from the date the governor attorney general issued a determination;**

**whichever is later."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1623 as introduced.)

MILLER D

Committee Vote: yeas 9, nays 1.

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#### COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1623, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 21, delete "If" and insert "(2) If".

Page 3, line 18, after "IC 4-21.5-3-27.5" insert "**and IC 34-52-2-1.5**".

**EH 1623—LS 7025/DI 125**





Page 3, delete lines 21 through 35, begin a new paragraph and insert:

"SECTION 3. IC 4-21.5-3-27.5, AS ADDED BY P.L.199-2021, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 27.5. In a proceeding under this chapter concerning an agency action, the administrative law judge shall order the agency to pay the reasonable attorney's fees incurred in the proceeding by the **prevailing** party challenging the agency action if:

- (1) the party challenging the agency action proves, by a preponderance of the evidence, that:
  - (~~1~~) (A) the agency's action was frivolous or groundless; or
  - (~~2~~) (B) the agency pursued the action in bad faith;
- (2) **the agency action was based on an invalid rule, as provided in IC 4-22-2-44; or**
- (3) **the agency has failed to demonstrate that the agency acted within its legal authority."**

Page 4, between lines 7 and 8, begin a new paragraph and insert:

"SECTION 5. IC 4-22-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 3. (a) "Agency" means any officer, board, commission, department, division, bureau, committee, or other governmental entity exercising any of the executive (including the administrative) powers of state government. The term does not include the judicial or legislative departments of state government or a political subdivision as defined in IC 36-1-2-13.

(b) "Rule" means the whole or any part of an agency statement of general applicability that:

- (1) has or is designed to have the effect of law; and
- (2) implements, interprets, or prescribes:
  - (A) law or policy; or
  - (B) the organization, procedure, or practice requirements of an agency.

**The term includes a fee, a fine, a civil penalty, a financial benefit limitation, or another payment amount set by an agency that otherwise qualifies as a rule.**

(c) "Rulemaking action" means the process of formulating or adopting a rule. The term does not include an agency action.

(d) "Agency action" has the meaning set forth in IC 4-21.5-1-4.

(e) "Person" means an individual, corporation, limited liability company, partnership, unincorporated association, or governmental entity.

(f) "Publisher" refers to the publisher of the Indiana Register and Indiana Administrative Code, which is the legislative council, or the



legislative services agency operating under the direction of the council.

(g) The definitions in this section apply throughout this article."

Page 4, delete lines 36 through 42, begin a new paragraph and insert:

"(d) Except as specifically set forth in IC 13-14-9:

**(1) IC 13-14-9 provides supplemental procedures for notice and public comment concerning proposed rules for the boards listed in IC 13-14-9-1; and**

**(2) the department of environmental management and the boards listed in IC 13-14-9-1 shall comply with the procedures in IC 13-14-9 in lieu of complying with sections ~~24~~, 26, 27, and 29 (except section 29(c)) of this chapter. ~~do not apply to~~ rulemaking actions under ~~IC 13-14-9~~.**

**In adopting rules, all other provisions of IC 4-22-2 apply to these agencies."**

Page 5, delete lines 1 through 4.

Page 5, line 8, delete "37.2, or 37.3" and insert "**or 37.2**".

Page 5, line 12, delete "37.2, or 37.3" and insert "**or 37.2**".

Page 5, between lines 25 and 26, begin a new paragraph and insert:

**"(c) Subject to subsection (e), after June 30, 2023, a public hearing or other public meeting in which an agency receives comments concerning a rulemaking action from the general public must be webcast on the state website during the hearing or meeting for the public to view the proceedings. Webcasts must be archived as public records on the state website.**

**(d) Subject to subsection (e), after June 30, 2023, an agency that conducts a public hearing or other public meeting at which the agency receives comments concerning a rulemaking action from the general public must provide a method by which members of the public can attend and comment remotely.**

**(e) The office of management and budget in consultation with the office of technology and the publisher shall establish how and where webcasts will be available, how agencies will provide opportunities for the general public to attend and comment remotely, and where notices of upcoming webcasts will be posted. The governor, by executive order, may delay the implementation of subsection (c) or (d), or both, for one (1) or more agencies if the governor finds that implementation of subsection (c) or (d), or both, is not technically feasible. The governor shall include specific findings concerning the reasons for a delay in the executive order. A delay under this subsection may not extend beyond December 31, 2025.**



**(f) Inadequacy or insufficiency of webcasting, archive of webcasting, or remote access under this section or a statement in a notice of the availability of webcasting, archive of webcasting, or remote access does not invalidate a rulemaking action."**

Page 5, after line 42, begin a new paragraph and insert:

"SECTION 9. IC 4-22-2-19, AS AMENDED BY P.L.53-2014, SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 19. (a) ~~Except as provided in section 23.1 of this chapter,~~ This section does not apply to the adoption of rules

~~(1)~~ required to receive or maintain:

~~(A)~~ **(1)** delegation;

~~(B)~~ **(2)** primacy; or

~~(C)~~ **(3)** approval;

for state implementation or operation of a program established under federal law.

~~(2)~~ that amend an existing rule;

~~(3)~~ required or authorized by statutes enacted before June 30, 1995; or

~~(4)~~ required or authorized by statutes enacted before June 30, 1995, and recodified in the same or similar form after June 29, 1995, in response to a program of statutory recodification conducted by the code revision commission.

(b) If an agency will have statutory authority to adopt a rule at the time that the rule becomes effective, the agency may conduct any part of its rulemaking action before the statute authorizing the rule becomes effective.

~~(c)~~ However, an agency shall:

(1) begin ~~the~~ a rulemaking process **needed to implement the statutory change** not later than sixty (60) days after the effective date of the statute that authorizes the rule; or

(2) if an agency cannot comply with subdivision (1), provide electronic notice to the publisher stating the reasons for the agency's noncompliance.

**(c) For purposes of this section, a rulemaking process is commenced when:**

**(1) the agency publishes a proposed rule under section 23 or 37.2 of this chapter; or**

**(2) in the case of a change in a statute described in section 38 of this chapter, the date the agency files with the publisher a rule document under section 38 of this chapter.**

**If an interim rulemaking procedure is commenced under section 37.2 of this chapter, the agency shall commence a permanent**



**rulemaking process under section 23 of this chapter before the adopted interim rule expires."**

Page 6, line 3, reset in roman "or".

Page 6, line 3, after "IC 13-14-9.5" insert "**IC 13-14-9**".

Page 6, between lines 16 and 17, begin a new paragraph and insert:  
**"SECTION 10. IC 4-22-2-19.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2023 (RETROACTIVE)]: Sec. 19.6. (a) A rule adopted under this article or IC 13-14-9 that includes a fee, fine, or civil penalty must comply with this section. Subsections (b), (c), and (d) do not apply to a rule that must be adopted in a certain form to comply with federal law.**

**(b) For each fee, fine, or civil penalty imposed by an agency that is not set as a specific amount in a state law, a rule must describe the circumstances for which the agency will assess a fee, fine, or civil penalty and set forth the amount of the fee, fine, or civil penalty:**

- (1) as a specific dollar amount;**
- (2) under a formula by which a specific dollar amount can be reasonably calculated by persons regulated or otherwise affected by the rule; or**
- (3) as a range of potential dollar amounts, stating the factors that the agency will utilize to set a specific dollar amount in an individual case with sufficient certainty that a review of an agency action under IC 4-21.5 or comparable process can evaluate whether the amount was reasonable.**

**A rule concerning fines or civil penalties does not prohibit an agency to enter into a settlement agreement with a person against whom a fine or civil penalty is being assessed to determine the fine or civil penalty to be paid for a violation.**

**(c) The amount of a fee must be reasonably based on the amount necessary to carry out the purposes for which the fee is imposed.**

**(d) An agency setting a fine or civil penalty shall consider the following:**

- (1) Whether the violation has a major or minor impact on the health, safety, or welfare of a person, the health or safety of animals or natural resources, or other facts set forth in the agency's rule.**
- (2) The number of previous violations committed by the offender of laws, rules, or programs administered by the agency.**
- (3) The need for deterrence of future violations.**



(4) Whether the conduct, if proved beyond a reasonable doubt, would constitute a criminal offense, and the level of penalty set by law for the criminal offense.

(e) An agency is not liable for a fee, fine, or civil penalty that is not in conformity with this section if:

(1) the fee, fine, or civil penalty was included in a rule that became effective before January 1, 2023, and that otherwise complies with subsection (b);

(2) the fee, fine, or civil penalty was:

(A) set by an agency before January 1, 2023;

(B) reviewed by the budget committee:

(i) in the case of the department of environmental management, the boards listed in IC 13-14-9-1, the office of environmental adjudication, the natural resources commission, the department of natural resources, the Indiana gaming commission, and the Indiana horse racing commission, before December 31, 2023; and

(ii) in the case of an agency not described in item (i), before July 1, 2024; and

(C) included in a rule that complies with this section and becomes effective before:

(i) in the case of the department of environmental management, the boards listed in IC 13-14-9-1, the office of environmental adjudication, the natural resources commission, the department of natural resources, the Indiana gaming commission, and the Indiana horse racing commission, December 31, 2024; and

(ii) in the case of an agency not described in item (i), July 1, 2025; or

(3) the agency withdraws or otherwise ceases to enforce or apply the fee, fine, or civil penalty before:

(A) in the case of the department of environmental management, the boards listed in IC 13-14-9-1, the office of environmental adjudication, the natural resources commission, the department of natural resources, the Indiana gaming commission, and the Indiana horse racing commission, December 31, 2023; and

(B) in the case of an agency not described in item (i), July 1, 2024.

Readoption without changes under IC 4-22-2.6 of a nonconforming fee, fine, or civil penalty that meets the requirements of subdivision (1) or (2) does not invalidate the nonconforming fee, fine, or civil



penalty.

(f) **Beginning January 1, 2024, an agency shall post on its website a schedule of fines and civil penalties that apply to violations of laws, rules, and requirements of federal programs administered by the agency."**

Page 7, line 28, strike "24" and insert "23".

Page 7, line 29, delete "or 37.3".

Page 7, line 29, delete "and".

Page 7, between lines 29 and 30, begin a new line block indented and insert:

**"(2) adopt under IC 13-14-9; or"**

Page 7, line 30, delete "(2)" and insert "(3)".

Page 7, line 35, delete "23, 37.2, or 37.3" and insert "23 or 37.2".

Page 8, line 31, delete "rule. The regulatory analysis must" and insert **"rule that complies with the requirements of this section."**

Page 8, delete lines 32 through 42.

Page 9, delete lines 1 through 5.

Page 9, line 16, after "budget." begin a new paragraph and insert: **"(c)".**

Page 9, delete lines 20 through 42, begin a new line block indented and insert:

**"(1) The cost benefit requirements in IC 4-3-22-13.**

**(2) Each of the standards in sections 19.5 and (if applicable) 19.6 of this chapter.**

**(3) If applicable, the requirements for fees, fines, and civil penalties in section 19.6 of this chapter.**

**(4) The annual economic impact on small businesses statement required under IC 4-22-2.1-5.**

**(5) If applicable, the information required under IC 13-14-9-4.**

**(6) Any requirement under any other law to conduct an analysis of the cost, benefits, economic impact, or fiscal impact of a rule, if applicable.**

**(d) The regulatory analysis must include a statement justifying any requirement or cost that is:**

**(1) imposed on a regulated entity under the rule; and**

**(2) not expressly required by:**

**(A) the statute authorizing the agency to adopt the rule; or**

**(B) any other state or federal law.**

**The statement required under this subsection must include a reference to any data, studies, or analyses relied upon by the agency in determining that the imposition of the requirement or**



cost is necessary."

Page 10, delete lines 1 through 15.

Page 10, line 16, delete "(c)" and insert "(e)".

Page 10, line 26, delete "first and second".

Page 11, line 6, delete "first and second".

Page 11, line 9, delete "first and second".

Page 11, line 18, after "this section." insert **"The budget agency and the office of management and budget may not approve any part of a proposed rule that adds or amends language to increase or expand application of a fee, fine, or civil penalty or a schedule of fees, fines, or civil penalties before submitting the proposed rule to the budget committee for review."**

Page 11, delete lines 24 through 32, begin a new paragraph and insert:

**"(e) If an agency revises a proposed rule after the budget agency and the office of management and budget authorize commencement of the public comment periods, the agency must obtain a new notice of determination under subsection (d). The agency shall resubmit to the budget agency and the office of management and budget the revised proposed rule and a revised regulatory analysis with sufficient information for the budget agency and the office of management and budget to determine the impact the revisions have on the regulatory analysis previously reviewed by the budget agency and the office of management and budget. After obtaining a new notice of determination, the agency shall submit to the publisher the new notice of determination, the revised proposed rule, and the revised regulatory analysis."**

Page 11, line 35, strike "(a)".

Page 11, line 36, delete "An agency may not adopt a proposed".

Page 11, delete lines 37 through 38.

Page 11, line 39, strike "(b)" and insert "(a)".

Page 12, line 2, delete "subsection (a)." and insert **"this section."**

Page 12, delete lines 5 through 9, begin a new line block indented and insert:

**"(1) A statement of the date, time, and place at which the hearing required by section 26 of this chapter will be convened, including information for how to attend the public hearing remotely.**

**(2) The full text of the agency's proposed rule in the form required by section 20 of this chapter and the documents required by section 21 of this chapter."**

Page 12, line 10, delete "(2)" and insert "(3)".



Page 12, line 13, delete "(3)" and insert "(4)".

Page 12, line 15, delete "first and second public comment periods on the proposed rule." and insert "**public comment periods.**

**(5) If the proposed rule adds or amends language to increase or expand application of a fee, fine, or civil penalty or a schedule of fees, fines, or civil penalties, the agenda of the budget committee meeting at which the rule was scheduled for review."**

Page 12, line 16, delete "(4)" and insert "(6)".

Page 12, line 16, delete "(c)." and insert "(b)."

Page 12, line 17, delete "(c)" and insert "(b)".

Page 12, delete lines 38 through 40, begin a new line block indented and insert:

**"(7) An indication that, if the agency does not receive any substantive comments during the comment period or public hearing, the agency may adopt a rule that is the same as or does not substantially differ from the text of the proposed rule published under this section."**

Page 13, between lines 15 and 16, begin a new paragraph and insert:

**"(c) Although the agency may comply with the publication requirements of this section on different days, the agency must comply with all of the publication requirements of this section at least thirty (30) days before the public hearing required by section 26 of this chapter is convened."**

Page 13, line 25, delete "." and insert ", including any information required under IC 13-14-9-4 (if applicable)."

Page 13, line 31, strike "(a) This section and section 19(b) of this".

Page 13, strike line 32.

Page 13, line 33, strike "(b)".

Page 13, after line 42, begin a new paragraph and insert:

"SECTION 16. IC 4-22-2-24, AS AMENDED BY P.L.1-2006, SECTION 71, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 24. (a) An agency shall notify the public of its intention to adopt a rule by complying with the publication requirements in subsections (b) and (c):

(b) The agency shall cause a notice of a public hearing to be published once in one (1) newspaper of general circulation in Marion County, Indiana. To publish the newspaper notice, the agency shall directly contract with the newspaper. An agency may not contract for the publication of a notice under this chapter until the agency has received a written or an electronic authorization to proceed from the publisher under subsection (g):





**(a) If:**

- (1) an agency receives substantive comments during the first comment period or the public hearing under section 23 of this chapter; or**
- (2) the rule establishes a requirement or limitation that is more stringent than an applicable federal requirement or limitation;**

**the agency must conduct a second comment period under this section.**

~~(e)~~ **(b) The agency shall cause a notice of public hearing and To publish a notice of the second comment period in the Indiana Register, the agency must submit the following to the publisher:**

- (1) The full text of the agency's proposed rule (excluding the full text of a matter incorporated by reference under section 21 of this chapter) to be published once in the Indiana Register. To publish the notice and proposed rule in the Indiana Register, the agency shall submit the text to the publisher in accordance with subsection (g). The agency shall submit the rule in the form required by section 20 of this chapter. and with The agency also shall submit the documents required by section 21 of this chapter (if the agency has not previously provided the publisher with the documents). The publisher shall determine the number of copies of the rule and other documents to be submitted under this subsection: subdivision.**

**(2) The notice required under subsection (c).**

~~(d)~~ **(c) The agency shall include the following in the second comment period notice required by subsections (b) and (e): published in the Indiana Register:**

- (1) A statement of the date, time, and place at which the public hearing required by section 26 of this chapter will be convened, including information for how to attend the hearing remotely."**

Delete page 14.

Page 15, delete lines 1 through 26.

Page 16, line 42, strike "(e)" and insert "(d)".

Page 17, delete lines 7 through 22, begin a new paragraph and insert:

~~(g)~~ **(e) The publisher shall review materials submitted under this section and determine the date that the publisher intends to include the material in the Indiana Register. After:**

- (1) establishing the intended publication date; and**
- (2) receiving the public hearing information specified in**



subsection (d) from the agency;  
 the publisher shall **If the submitted material complies with this section, the publisher shall establish the intended publication date, assign a document control number to the proposed rule, and provide a written or an electronic mail authorization to proceed to the agency. The publisher shall publish the following in the Indiana Register on the intended publication date:**

- (1) **The notice of the second comment period, including any information required under IC 13-14-9-4 (if applicable).**
- (2) **The full text of the agency's proposed rule (excluding the full text of a matter incorporated by reference under section 21 of this chapter)."**

Page 18, between lines 9 and 10, begin a new paragraph and insert:  
 "SECTION 20. IC 4-22-2-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 26. (a) After the notices and the text of an agency's proposed rule are published under ~~section~~ **sections 23 and (if applicable) 24** of this chapter, the agency shall conduct a public hearing on the proposed rule.

(b) The agency shall convene the public hearing on the date and at the time and place stated in its notices **and include an option for remote attendance.**

(c) The agency may conduct the public hearing in any informal manner that allows for an orderly presentation of comments and avoids undue repetition. However, the agency shall afford any person attending the public hearing an adequate opportunity to comment on the agency's proposed rule through the presentation of oral and written facts or argument.

(d) The agency may recess the public hearing and reconvene it on a different date or at a different time or place by:

- (1) announcing the date, time, and place of the reconvened public hearing in the original public hearing before its recess; and
- (2) recording the announcement in the agency's record of the public hearing.

(e) An agency that complies with subsection (d) is not required to give any further notice of a public hearing that is to be reconvened."

Page 18, line 13, delete "written".

Page 18, line 15, strike "hearing" and insert "**hearings**".

Page 18, line 15, strike "section" and insert "**sections 23, 24, and**".

Page 21, delete lines 41 through 42, begin a new paragraph and insert:

"SECTION 21. IC 4-22-2-28.1, AS AMENDED BY P.L.237-2017, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



- JULY 1, 2023]: Sec. 28.1. (a) This section applies to the following:
- (1) A rule for which the notice required by section 23 of this chapter or by IC 13-14-9-3 is published by an agency or the board (as defined in IC 13-13-8-1);
  - (2) A rule for which:
    - (A) the notice required by IC 13-14-9-3; or
    - (B) an appropriate later notice for circumstances described in subsection (g);
 is published by the department of environmental management after June 30, 2006.
- (b) (a) As used in this section, **The following definitions apply throughout this section:**
- (1) "Coordinator" refers to the small business regulatory coordinator assigned to a rule by an agency under subsection (e);
  - (b).
  - (c) As used in this section, (2) "Director" refers to the director or other administrative head of an agency.
  - (d) As used in this section, (3) "Small business" has the meaning set forth in IC 5-28-2-6.
  - (e) (b) For each rulemaking action and rule finally adopted as a result of a rulemaking action by an agency, ~~under this chapter~~, the agency shall assign one (1) staff person to serve as the agency's small business regulatory coordinator with respect to the proposed or adopted rule. The agency shall assign a staff person to a rule under this subsection based on the person's knowledge of, or experience with, the subject matter of the rule. A staff person may serve as the coordinator for more than one (1) rule proposed or adopted by the agency if the person is qualified by knowledge or experience with respect to each rule. Subject to subsection (f):
    - (1) in the case of a proposed rule; the notice of intent to adopt the ~~rule~~ **The first comment period notice** published under section 23 of this chapter or
    - (2) in the case of a rule proposed by the department of environmental management or the board (as defined in IC 13-13-8-1); the notice published under IC 13-14-9-3 or the findings published under IC 13-14-9-8(b)(1), whichever applies;
 must include the name, address, telephone number, and electronic mail address of the small business coordinator for the proposed rule, the name, address, telephone number, and electronic mail address of the small business ombudsman designated under IC 5-28-17-6, and a statement of the resources available to regulated entities through the small business ombudsman designated under IC 5-28-17-6. Subject to



subsection (f); In the case of a rule finally adopted, the final rule, as published in the Indiana Register, must include the name, address, telephone number, and electronic mail address of the coordinator.

(f) (c) This subsection applies to a rule adopted by the department of environmental management or the board (as defined in IC 13-13-8-1) under IC 13-14-9. Subject to subsection (g), listed in IC 13-14-9-1. In addition to the information required by subsection (b), the department and a board shall include in the notice provided under IC 13-14-9-3 or in the findings published under IC 13-14-9-8(b)(1), whichever applies, section 23 of this chapter and in the publication of the final rule in the Indiana Register:

- (1) a statement of the resources available to regulated entities through the technical and compliance assistance program established under IC 13-28-3;
- (2) the name, address, telephone number, and electronic mail address of the ombudsman designated under IC 13-28-3-2;
- (3) if applicable, a statement of:
  - (A) the resources available to small businesses through the small business stationary source technical assistance program established under IC 13-28-5; and
  - (B) the name, address, telephone number, and electronic mail address of the ombudsman for small business designated under IC 13-28-5-2(3). and

(4) the information required by subsection (e).

The coordinator assigned to the rule under subsection (e) shall work with the ombudsman described in subdivision (2) and the office of voluntary compliance established by IC 13-28-1-1 to coordinate the provision of services required under subsection (h) and IC 13-28-3. If applicable, the coordinator assigned to the rule under subsection (e) shall work with the ombudsman referred to in subdivision (3)(B) to coordinate the provision of services required under subsection (h) this section and IC 13-28-5.

(g) If the notice provided under IC 13-14-9-3 is not published as allowed by IC 13-14-9-7, the department of environmental management shall publish in the notice provided under IC 13-14-9-4 the information that subsection (f) would otherwise require to be published in the notice under IC 13-14-9-3. If neither the notice under IC 13-14-9-3 nor the notice under IC 13-14-9-4 is published as allowed by IC 13-14-9-8, the department of environmental management shall publish in the commissioner's written findings under IC 13-14-9-8(b) the information that subsection (f) would otherwise require to be published in the notice under IC 13-14-9-3.



~~(h)~~ **(d)** The coordinator assigned to a rule ~~under subsection (e)~~ shall serve as a liaison between the agency and any small business subject to regulation under the rule. The coordinator shall provide guidance to small businesses affected by the rule on the following:

- (1) Any requirements imposed by the rule, including any reporting, record keeping, or accounting requirements.
- (2) How the agency determines or measures compliance with the rule, including any deadlines for action by regulated entities.
- (3) Any penalties, sanctions, or fines imposed for noncompliance with the rule.
- (4) Any other concerns of small businesses with respect to the rule, including the agency's application or enforcement of the rule in particular situations. However, in the case of a rule adopted ~~under IC 13-14-9~~, **by the department of environmental management or a board listed in IC 13-14-9-1**, the coordinator assigned to the rule may refer a small business with concerns about the application or enforcement of the rule in a particular situation to the ombudsman designated under IC 13-28-3-2 or, if applicable, under IC 13-28-5-2(3).

~~(i)~~ **(e)** The coordinator assigned to a rule ~~under subsection (e)~~ shall provide guidance under this section in response to questions and concerns expressed by small businesses affected by the rule. The coordinator may also issue general guidelines or informational pamphlets to assist small businesses in complying with the rule. Any guidelines or informational pamphlets issued under this subsection shall be made available:

- (1) for public inspection and copying at the offices of the agency under IC 5-14-3; and
- (2) electronically through electronic gateway access.

~~(j)~~ **(f)** The coordinator assigned to a rule ~~under subsection (e)~~ shall keep a record of all comments, questions, and complaints received from small businesses with respect to the rule. The coordinator shall deliver the record, along with any accompanying documents submitted by small businesses, to the director:

- (1) not later than ten (10) days after the date on which the rule is submitted to the publisher under section 35 of this chapter; and
- (2) before July 15 of each year during which the rule remains in effect.

The coordinator and the director shall keep confidential any information concerning a small business to the extent that the information is exempt from public disclosure under IC 5-14-3-4.

~~(k)~~ **(g)** Not later than November 1 of each year, the director shall:



- (1) compile the records received from all of the agency's coordinators under subsection ~~(j)~~; **(f)**;
- (2) prepare a report that sets forth:
  - (A) the number of comments, complaints, and questions received by the agency from small businesses during the most recent state fiscal year, categorized by the subject matter of the rules involved;
  - (B) the number of complaints or questions reported under clause (A) that were resolved to the satisfaction of the agency and the small businesses involved;
  - (C) the total number of staff serving as coordinators under this section during the most recent state fiscal year;
  - (D) the agency's costs in complying with this section during the most recent state fiscal year; and
  - (E) the projected budget required by the agency to comply with this section during the current state fiscal year; and
- (3) deliver the report to the legislative council in an electronic format under IC 5-14-6 and to the small business ombudsman designated under IC 5-28-17-6.

SECTION 43. IC 4-22-2-28.2, AS AMENDED BY P.L.133-2012, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 28.2. (a) This section applies to a violation described in subsection (c) that occurs after June 30, 2005. However, in the case of a violation of a rule adopted under IC 13-14-9 by the department of environmental management or the board (as defined in IC 13-13-8-1), the procedures set forth in IC 13-30-4-3 and IC 13-30-7 apply instead of this section.

(b) As used in this section, "small business" has the meaning set forth in section ~~28.1(d)~~ **28.1(a)** of this chapter.

(c) Except as provided in subsection (d), a small business that voluntarily provides notice to an agency of the small business's actual or potential violation of a rule adopted by the agency under this chapter is immune from civil or criminal liability resulting from an agency action relating to the violation if the small business does the following:

- (1) Provides written notice of the violation to the agency not later than forty-five (45) days after the small business knew or should have known that the violation occurred.
- (2) Corrects the violation within a time agreed to by the agency and the small business. However, the small business shall be given at least ninety (90) days after the date of the notice described in subdivision (1) to correct the violation. The small business may correct the violation at any time before the



expiration of the period agreed to under this subdivision.

(3) Cooperates with any reasonable request by the agency in any investigation initiated in response to the notice.

(d) A small business is not immune from civil or criminal liability relating to a violation of which the small business provides notice under subsection (c) if any of the following apply:

(1) The violation resulted in serious harm or in imminent and substantial endangerment to the public health, safety, or welfare.

(2) The violation resulted in a substantial economic benefit that afforded the small business a clear advantage over the small business's competitors.

(3) The small business has a pattern of continuous or repeated violations of the rule at issue or any other rules of the agency.

(e) Information that a small business provides under this section, including actions and documents that identify or describe the small business, to an agency in providing notice of the small business's actual or potential violation of a rule adopted by the agency is confidential, unless a clear and immediate danger to the public health, safety, or welfare or to the environment exists. Information described in this subsection may not be made available for use by the agency for purposes other than the purposes of this section without the consent of the small business.

(f) Voluntary notice of an actual or a potential violation of a rule that is provided by a small business under subsection (c) is not admissible as evidence in a proceeding, other than an agency proceeding, to prove liability for the rule violation or the effects of the rule violation.

SECTION 1. IC 4-22-2-29, AS AMENDED BY P.L.237-2017, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 29. (a) As used in this section, "small business ombudsman" refers to the small business ombudsman designated under IC 5-28-17-6.

(b) After an agency has complied with sections 26, 27, and 28 of this chapter, the agency may:

(1) adopt a rule that is identical to a proposed rule published in the Indiana Register under section **23 or (as applicable) 24** of this chapter;

(2) subject to subsection (c), adopt a rule that consolidates part or all of two (2) or more proposed rules published in the Indiana Register under section **23 or (as applicable) 24** of this chapter and considered under section 27 of this chapter;

(3) subject to subsection (c), adopt part of one (1) or more



proposed rules described in subdivision (2) in two (2) or more separate adoption actions; or

(4) subject to subsection (c), adopt a revised version of a proposed rule published under section **23 or (as applicable) 24** of this chapter and include provisions that did not appear in the published version, including any provisions recommended by the small business ombudsman under IC 4-22-2.1-6(a), if applicable.

(c) **Subject to IC 13-14-9-4.5 (if applicable)**, an agency may not adopt a rule that substantially differs from the version or versions of the proposed rule or rules published in the Indiana Register under section **23 or 24** of this chapter, **or IC 13-14-9-14 (as applicable)**, unless it is a logical outgrowth of any proposed rule as supported by any written **and public hearing** comments submitted:

(1) during the public comment period; or

(2) by the small business ombudsman under IC 4-22-2.1-6(a), if applicable."

Delete pages 22 through 25.

Page 26, delete line 1.

Page 26, line 5, strike "with IC 13-14-9-9(1) or IC 13-14-9-9(2)," and insert "**adopted the rule in conformity with IC 13-14-9**,"

Page 26, line 12, delete "23(d) and 24(f)" and insert "**23 and 24**".

Page 26, line 12, delete "chapter." and insert "chapter **or IC 13-14-9-4, IC 13-14-9-5, or IC 13-14-9-14, as applicable**."

Page 26, between lines 18 and 19, begin a new paragraph and insert:  
"SECTION 24. IC 4-22-2-32, AS AMENDED BY P.L.1-2006, SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 32. (a) The attorney general shall review each rule submitted under section 31 of this chapter for legality.

(b) In the review, the attorney general shall determine whether the rule adopted by the agency complies with the requirements under section 29 of this chapter **and (if applicable) IC 13-14-9**. The attorney general shall consider the following:

(1) The extent to which all persons affected by the adopted rule should have understood from the published rule or rules that their interests would be affected.

(2) The extent to which the subject matter of the adopted rule or the issues determined in the adopted rule are different from the subject matter or issues that were involved in the published rule or rules.

(3) The extent to which the effects of the adopted rule differ from the effects that would have occurred if the published rule or rules had been adopted instead.





In the review, the attorney general shall consider whether the adopted rule may constitute the taking of property without just compensation to an owner.

(c) Except as provided in subsections (d) and (h), the attorney general shall disapprove a rule under this section only if it:

- (1) has been adopted without statutory authority;
- (2) has been adopted without complying with this chapter;
- (3) does not comply with requirements under section 29 of this chapter; or
- (4) violates another law.

Otherwise, the attorney general shall approve the rule without making a specific finding of fact concerning the subjects.

(d) If an agency submits a rule to the attorney general without complying with section 20(a)(2) of this chapter, the attorney general may:

- (1) disapprove the rule; or
- (2) return the rule to the agency without disapproving the rule.

(e) If the attorney general returns a rule under subsection (d)(2), the agency may bring the rule into compliance with section 20(a)(2) of this chapter and resubmit the rule to the attorney general without readopting the rule.

(f) If the attorney general determines in the course of the review conducted under subsection (b) that a rule may constitute a taking of property, the attorney general shall advise the following:

- (1) The governor.
- (2) The agency head.

Advice given under this subsection shall be regarded as confidential attorney-client communication.

(g) The attorney general has forty-five (45) days from the date that an agency:

- (1) submits a rule under section 31 of this chapter; or
- (2) resubmits a rule under subsection (e);

to approve or disapprove the rule. If the attorney general neither approves nor disapproves the rule, the rule is deemed approved, and the agency may submit it to the governor for approval under section 33 of this chapter without the approval of the attorney general.

(h) For rules adopted under IC 13-14-9, the attorney general:

- (1) shall determine whether the rule adopted by the agency under ~~IC 13-14-9-9(2)~~ **is a IC 13-14-9 meets the appropriate substantial similarity or** logical outgrowth ~~of the proposed rule as published under IC 13-14-9-5(a)(2) and of testimony presented at the board meeting held under IC 13-14-9-5(a)(3); standard~~



**under section 29(c) of this chapter; and**

(2) may disapprove a rule under this section only if the rule:

(A) has been adopted without statutory authority;

(B) has been adopted without complying with this chapter or IC 13-14-9;

(C) **is not a logical outgrowth of the proposed rule as published under IC 13-14-9-5(a)(2) and of the testimony presented at the board meeting held under IC 13-14-9-5(a)(3); meets the appropriate substantial similarity or logical outgrowth standard under section 29(c) of this chapter; or**

(D) violates another law."

Page 26, line 27, delete "emergency" and insert "**provisional**".

Page 26, line 30, delete "emergency rule" and insert "**rule by the name of emergency rule or provisional rule**".

Page 26, line 42, delete "emergency" and insert "**provisional**".

Page 27, line 6, delete "or".

Page 27, line 8, delete "program." and insert "**program;**

**(5) injury to the business or interests of the people or any public utility of Indiana as determined under IC 8-1-2-113;**

**(6) an imminent and substantial peril to:**

**(A) wildlife; or**

**(B) domestic animal;**

**health, safety, or welfare; or**

**(7) the spread of invasive species, pests, or diseases affecting plants."**

Page 27, line 10, delete "emergency" and insert "**provisional**".

Page 27, line 11, delete "emergency" and insert "**provisional**".

Page 27, line 13, after "governor." insert "**The governor may not approve provisional rulemaking for any part of a proposed provisional rule that adds or amends language to increase or expand application of a fee, fine, or civil penalty or a schedule of fees, fines, or civil penalties before submitting the proposal to the budget committee for review.**".

Page 27, line 20, delete "emergency" and insert "**provisional**".

Page 27, line 20, delete "rule," and insert "**rule but before the agency adopts the provisional rule,**".

Page 27, line 27, after "number." insert "**The agency must submit at least the following:**

**(1) The full text of the proposed provisional rule in the form required by section 20 of this chapter.**

**(2) A statement justifying the need for provisional rulemaking.**



**(3) The approval of the governor to use provisional rulemaking procedures required by law.**

**(4) The documents required by section 21 of this chapter.**

**An agency may not adopt a proposed provisional rule until after the publisher notifies the agency that the publisher has complied with subsection (d). At least ten (10) regular business days must elapse after the publisher has complied with subsection (d) before the department of natural resources, the natural resources commission, the department of environmental management, or a board that has rulemaking authority under IC 13 adopts a provisional rule.**

**(d) Upon receipt of documents described in subsection (c), the publisher shall distribute the full text of the proposed provisional rule to legislators and legislative committees in the manner and the form specified by the legislative council or the personnel subcommittee of the legislative council acting for the legislative council. After distribution has occurred, the publisher shall notify the agency of the date that distribution under this subsection has occurred."**

Page 27, line 28, strike "(d)" and insert "(e)".

Page 27, line 31, delete "emergency" and insert "**provisional**".

Page 27, line 32, delete "emergency" and insert "**provisional**".

Page 27, line 35, delete "emergency" and insert "**provisional**".

Page 27, delete lines 37 through 38, begin a new line block indented and insert:

**"(3) If the provisional rule adds or amends language to increase or expand application of a fee, fine, or civil penalty or a schedule of fees, fines, or civil penalties, the agenda of the budget committee meeting at which the rule was scheduled for review."**

Page 27, line 40, delete "emergency" and insert "**provisional**".

Page 27, line 42, delete "emergency" and insert "**provisional**".

Page 28, line 1, delete "emergency" and insert "**provisional**".

Page 28, line 2, delete "An emergency" and insert "**A provisional**".

Page 28, line 5, strike "(e)" and insert "(f)".

Page 28, line 5, delete "subsection (d)" and insert "**subsections (c) and (e)**".

Page 28, line 10, delete "emergency" and insert "**provisional**".

Page 28, line 12, strike "(f)" and insert "(g)".

Page 28, line 12, delete "A An emergency" and insert "**A provisional**".

Page 28, line 15, delete "emergency" and insert "**provisional**".



- Page 28, line 16, delete "emergency" and insert "**provisional**".
- Page 28, line 17, strike "(e)." and insert "**(f)**".
- Page 28, line 19, delete "emergency" and insert "**provisional**".
- Page 28, line 22, delete "emergency" and insert "**provisional**".
- Page 28, line 23, strike "an emergency" and insert "**a provisional**".
- Page 28, line 37, delete "(g)" and insert "**(h)**".
- Page 28, line 37, delete "an emergency" and insert "**a provisional**".
- Page 28, line 38, delete "emergency" and insert "**provisional**".
- Page 28, line 39, delete "emergency" and insert "**provisional**".
- Page 28, line 40, delete "an emergency" and insert "**a provisional**".
- Page 28, line 40, after "of" delete "an" and insert "**a provisional**".
- Page 28, line 41, delete "emergency rule by another emergency" and insert "**rule by another provisional**".
- Page 28, line 42, delete "emergency" and insert "**provisional**".
- Page 29, line 1, delete "(e)." and insert "**(f)**".
- Page 29, line 2, delete "emergency rule, including" and insert "**provisional rule, including**".
- Page 29, line 2, after "the" delete "emergency" and insert "**provisional**".
- Page 29, line 4, delete "emergency" and insert "**circumstance**".
- Page 29, line 6, delete "emergency" and insert "**provisional**".
- Page 29, line 13, delete "(h)" and insert "**(i)**".
- Page 29, line 13, after "subsection" delete "(i)," and insert "**(j)**".
- Page 29, line 14, delete "an emergency" and insert "**a provisional**".
- Page 29, line 16, after "that" delete "an emergency" and insert "**a provisional**".
- Page 29, line 16, after "to" delete "an emergency" and insert "**a provisional**".
- Page 29, line 17, delete "(e)." and insert "**(f)**".
- Page 29, line 18, delete "emergency" and insert "**provisional**".
- Page 29, line 20, delete "emergency" and insert "**provisional**".
- Page 29, line 21, delete "an emergency" and insert "**a provisional**".
- Page 29, line 23, delete "(i)" and insert "**(j)**".
- Page 29, line 23, delete "an" and insert "**a provisional**".
- Page 29, line 24, delete "emergency".
- Page 29, line 24, delete "(h)" and insert "**(i)**".
- Page 29, line 25, delete "emergency" and insert "**provisional**".
- Page 29, line 28, delete "an emergency" and insert "**a provisional**".
- Page 30, line 5, after "may" insert "**only**".
- Page 30, line 6, delete "with a single comment period of".
- Page 30, line 7, delete "at least thirty (30) days in length".
- Page 30, line 17, delete "or".



Page 30, line 18, delete "new".

Page 30, line 23, after "organization;" insert "or

**(3) a category of rule authorized under IC 4-22-2.3 to be adopted as an interim rule;"**.

Page 30, line 25, after "effect." begin a new paragraph and insert: "(c)".

Page 30, line 30, after "governor." insert "**The governor may not approve interim rulemaking for any part of a proposed interim rule that adds or amends language to increase or expand application of a fee, fine, or civil penalty or a schedule of fees, fines, or civil penalties before submitting the proposal to the budget committee for review.**".

Page 30, delete lines 36 through 42, begin a new paragraph and insert:

**"(d) To publish a notice of interim rulemaking in the Indiana Register, the agency must submit the following to the publisher:**

**(1) The full text of the agency's proposed interim rule in the form required by section 20 of this chapter.**

**(2) The approval of the governor to use interim rulemaking procedures for the rule.**

**(3) If the interim rule adds or amends language to increase or expand application of a fee, fine, or civil penalty or a schedule of fees, fines, or civil penalties, the agenda of the budget committee meeting at which the rule was scheduled for review.**

**(4) The documents required by section 21 of this chapter.**

**The publisher shall review materials submitted under this".**

Page 31, line 3, delete "date and receiving the public comment period" and insert "date,".

Page 31, line 4, delete "information from the agency,".

Page 31, line 6, delete "(d)" and insert "(e)".

Page 31, between lines 9 and 10, begin a new line block indented and insert:

**"(2) The full text of the agency's proposed interim rule in the form required by section 20 of this chapter (excluding the text of a matter incorporated by reference under section 21 of this chapter)."**

Page 31, line 10, delete "(2)" and insert "(3)".

Page 31, line 18, delete "necessary and where and how a person may inspect" and insert "necessary."

**(4) Information concerning where, when, and how a person may inspect and copy any data, studies, or analyses**



referenced under subdivision (3).

**(5) Information concerning where, when, and how a person may inspect any documents incorporated by reference into the proposed interim rule under section 21 of this chapter."**

Page 31, delete lines 19 through 20.

Page 31, line 21, delete "(3)" and insert "(6)".

Page 31, line 24, delete "expedited" and insert "**interim**".

Page 31, line 29, delete "(2)" and insert "(3)".

Page 31, line 33, delete "(e)" and insert "(f)".

Page 31, line 36, delete "(f)" and insert "(g)".

Page 31, line 36, delete "initial".

Page 31, line 37, delete "of at least thirty (30) days in length".

Page 31, line 38, delete "(e)," and insert "(f),".

Page 32, line 7, delete "(g)" and insert "(h)".

Page 32, line 10, after "submit the" insert "**full text of the**".

Page 32, delete lines 18 through 19.

Page 32, line 20, delete "(5)" and insert "(4)".

Page 32, line 25, delete "(h)" and insert "(i)".

Page 32, line 25, after "subsection" delete "(g)" and insert "(h)".

Page 32, line 32, delete "(i)" and insert "(j)".

Page 32, line 37, delete "(h)." and insert "(i).".

Page 33, line 3, delete "(j)" and insert "(k)".

Page 33, line 5, delete "An" and insert "**Except as provided in IC 4-22-2.3, an**".

Page 33, line 6, delete "or 37.3".

Page 33, line 8, after "subsection" insert "(i).".

Page 33, delete lines 9 through 13.

Page 33, line 14, delete "(k)" and insert "(l)".

Page 33, line 14, after "subsection" delete "(l)," and insert "(m),".

Page 33, line 18, delete "(h)." and insert "(i).".

Page 33, line 24, delete "(l)" and insert "(m)".

Page 33, line 25, delete "(k)" and insert "(l)".

Page 33, delete lines 33 through 42.

Delete pages 34 through 36.

Page 37, delete lines 1 through 5.

Page 37, line 22, delete "37.3" and insert "**37.2**".

Page 38, line 19, delete "37.3,".

Page 39, line 9, delete "37.3,".

Page 39, line 16, delete "Sections 24" and insert "**IC 13-14-9 and sections ~~24~~ 23**".

Page 39, line 19, delete "Sections 24" and insert "**IC 13-14-9 and sections ~~24~~ 23**".



Page 39, line 23, delete "sections 24" and insert "**IC 13-14-9 or sections 24 23**".

Page 39, line 25, delete "chapter." and insert "**chapter or IC 13-14-9-9 (as applicable)**".

Page 40, line 9, delete "37.3,".

Page 40, line 14, delete "37.3,".

Page 40, line 16, delete "Sections 24" and insert "**IC 13-14-9 and sections 24 23**".

Page 43, line 4, delete "readopted" and insert "**adopted**".

Page 43, line 28, delete "an emergency" and insert "**a provisional**".

Page 43, line 30, delete "emergency" and insert "**provisional**".

Page 43, line 31, delete "expedited" and insert "**interim**".

Page 43, line 31, delete "IC 4-22-2-37.3" and insert "**IC 4-22-2-37.2**".

Page 43, line 32, delete "emergency" and insert "**provisional**".

Page 43, line 33, delete "emergency" and insert "**provisional**".

Page 43, line 35, delete "June 30 of the year following the year in which the rule" and insert "**one (1) year after the date on which the rules are published in the Indiana Register**".

Page 43, delete lines 36 through 42, begin a new paragraph and insert:

**"Sec. 3. The director of the department of natural resources may adopt interim rules under the interim rule procedures in IC 4-22-2-37.2 to temporarily modify or suspend a rule described in IC 14-22-2-6 (fish and wildlife rules). An interim rule authorized under this section expires not later than one (1) year after the rule is accepted for filing by the publisher of the Indiana Register and may not be continued in another interim rule.**

**Sec. 4. The Indiana state board of education may adopt interim rules under the interim rule procedures in IC 4-22-2-37.2 for the provision of special education or related services to an eligible choice scholarship student who receives an amount under IC 20-51-4-4(a)(2). An interim rule authorized under this section expires not later than one (1) year after the rule is accepted for filing by the publisher of the Indiana Register and may not be continued in another interim rule.**

**Sec. 5. The department of natural resources (or to the extent permitted by IC 14-10-2, the natural resources commission) may adopt interim rules under the interim rule procedures in IC 4-22-2-37.2 to carry out the duties of the department of natural resources under a law listed in IC 14-10-2-5. A rule described in this section may be continued in another interim rule only if the**



governor determines under section IC 4-22-2-37.2(c) that the policy options available to the agency are so limited that use of the additional notice, comment, and review procedures in IC 4-22-2-23 through IC 4-22-2-36 would provide no benefit to persons regulated or otherwise affected by the rule.

Sec. 6. The following apply to the department of financial institutions:

(1) The department of financial institutions shall adopt rules under the interim rule procedures in IC 4-22-2-37.2 announcing:

(A) sixty (60) days before January 1 of each odd-numbered year in which dollar amounts under IC 24-4.5 (Uniform Consumer Credit Code) are to change, the changes in dollar amounts required by IC 24-4.5-1-106(2);

(B) promptly after the changes occur, changes in the Index required by IC 24-4.5-1-106(3), including, when applicable, the numerical equivalent of the Reference Base Index under a revised Reference Base Index and the designation or title of any index superseding the Index;

(C) the adjustments required under IC 24-9-2-8 concerning high cost home loans; and

(D) the adjustments required under IC 34-55-10-2 (bankruptcy exemptions; limitations) or IC 34-55-10-2.5.

A rule described in this subdivision expires not later than January of the next odd-numbered year after the department of financial institutions is required to issue the rule.

(2) The department of financial institutions may adopt a rule under the interim rule procedures in IC 4-22-2-37.2 for a rule permitted under IC 24-4.4-1-101 (licensing system for creditors and mortgage loan originators) or IC 24-4.5 (Uniform Consumer Credit Code) if the department of financial institutions declares an emergency. The rule described in this subdivision expires not later than two (2) years after the rule is effective.

(3) The department of financial institutions may adopt a rule described in IC 34-55-10-2 (bankruptcy exemptions; limitations) or IC 34-55-10-2.5 in conformity with the procedures in IC 4-22-2-23 through IC 4-22-2-36 or the interim rule procedures in IC 4-22-2-37.2. A rule described in this subdivision adopted under IC 4-22-2-37.2 expires not later than two (2) years after the rule is accepted for filing by the publisher of the Indiana Register.





A rule described in this section may be continued in another interim rule only if the governor determines under section IC 4-22-2-37.2(c) that the policy options available to the agency are so limited that use of the additional notice, comment, and review procedures in IC 4-22-2-23 through IC 4-22-2-36 would provide no benefit to persons regulated or otherwise affected by the rule.

**Sec. 7.** The Indiana utility regulatory commission may adopt interim rules under the interim rule procedures in IC 4-22-2-37.2 pursuant to its authority under IC 8-1-1-3(g) or IC 8-1-2-113. A rule described in this section expires not later than two (2) years after the rule is accepted for filing by the publisher of the Indiana Register and may not be continued in another interim rule.

**Sec. 8.** The Indiana board of pharmacy may adopt interim rules under IC 4-22-2-37.2 to declare a substance is a synthetic drug if the board finds that the substance:

- (1) has been scheduled or emergency scheduled by the United States Drug Enforcement Administration;
- (2) has been scheduled, emergency scheduled, or criminalized by another state; or
- (3) has:
  - (A) a high potential for abuse; and
  - (B) no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

In making a determination, the Indiana board of pharmacy shall consider the factors described in IC 25-26-13-4.1. Notwithstanding IC 4-22-2-37.2(i), a rule described in this section becomes effective when the rule is published in the Indiana Register. A rule described in this section expires not later than one (1) year after the rule is accepted for filing by the publisher of the Indiana Register and may not be continued in another interim rule.

**Sec. 9.** The Indiana pesticide review board may adopt interim rules under IC 4-22-2-37.2 to classify a pesticide as a restricted use pesticide or a pesticide for use by prescription only pending review by the general assembly, if the Indiana pesticide review board finds that:

- (1) the pesticide has been classified as a restricted use pesticide or a pesticide for use by prescription only by the United States Environmental Protection Agency; and
- (2) adoption of the interim rule is necessary to prevent an undue and immediate hazard to persons, animals, wildlife, lands, or water, other than the pests that the pesticide is



**intended to prevent, destroy, control, or mitigate.**

**A rule described in this section expires not later than sixty (60) days after adjournment sine die of the regular session of the general assembly that occurs after the interim rule proceeding is commenced."**

Delete pages 44 through 45.

Page 46, delete lines 1 through 12.

Page 47, line 33, delete "do the following:" and insert **"meet each of the standards in IC 4-22-2-19.5 and (if applicable) the requirements for fees, fines, and civil penalties in IC 4-22-2-19.6."**

Page 47, delete lines 34 through 42.

Page 48, delete lines 1 through 5.

Page 48, line 9, after "IC 4-3-27-12," insert **"IC 4-22-2-22.7, IC 4-22-2-22.8,"**.

Page 52, delete lines 39 through 42, begin a new paragraph and insert:

**"SECTION 39. IC 13-14-9-0.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 0.2. This chapter (as effective January 1, 2023) continues to apply after June 30, 2023, to a rulemaking action that is commenced under this chapter before July 1, 2023.**

SECTION 40. IC 13-14-9-1, AS AMENDED BY P.L.133-2012, SECTION 89, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. (a) Except as provided in ~~sections 8 and section~~ 14 of this chapter, this chapter applies to the following:

(1) The board.

(2) The underground storage tank financial assurance board established by IC 13-23-11-1.

(b) In addition to the requirements of IC 4-22-2 and IC 13-14-8, a board may not adopt a rule except in accordance with this chapter.

SECTION 41. IC 13-14-9-2 IS REPEALED [EFFECTIVE JULY 1, 2023]. ~~Sec. 2: Except as provided in sections 4.5; 7; 8; and 14 of this chapter, a board may not adopt a rule under this chapter until the board has conducted at least two (2) public comment periods; each of which must be at least thirty (30) days in length.~~

SECTION 42. IC 13-14-9-3, AS AMENDED BY P.L.100-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 3. (a) ~~Except as provided in subsection (b);~~ **Before publication of the notice described in IC 4-22-2-23,** the department ~~shall~~ **may** provide notice in the Indiana Register of ~~the first~~ **a public comment period required by section 2 of this chapter.**



**regarding potential rulemaking.** A notice provided under this section must do the following:

- (1) Identify the authority under which the proposed rule is to be adopted.
- (2) Describe the subject matter and the basic purpose of the proposed rule. The description required by this subdivision must:
  - (A) list all alternatives being considered by the department at the time of the notice;
  - (B) state whether each alternative listed under clause (A) creates:
    - (i) a restriction or requirement more stringent than a restriction or requirement imposed under federal law; or
    - (ii) a restriction or requirement in a subject area in which federal law does not impose restrictions or requirements;
  - (C) state the extent to which each alternative listed under clause (A) differs from federal law;
  - (D) include any information known to the department about the potential fiscal impact of each alternative under clause (A) that creates:
    - (i) a restriction or requirement more stringent than a restriction or requirement imposed under federal law; or
    - (ii) a restriction or requirement in a subject area in which federal law does not impose restrictions or requirements;
 and
  - (E) set forth the basis for each alternative listed under clause (A).
- (3) Describe the relevant statutory or regulatory requirements or restrictions relating to the subject matter of the proposed rule that exist before the adoption of the proposed rule.
- (4) Request the submission of alternative ways to achieve the purpose of the proposed rule.
- (5) Request the submission of comments, including suggestions of specific language for the proposed rule.
- (6) Include a detailed statement of the issue to be addressed by adoption of the proposed rule.

~~(b) This section does not apply to rules adopted under IC 13-18-22-2, IC 13-18-22-3, or IC 13-18-22-4.~~

~~(c) The notice required under subsection (a) shall be published electronically in the Indiana Register under procedures established by the publisher.~~

SECTION 43. IC 13-14-9-4, AS AMENDED BY P.L.218-2016, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

**EH 1623—LS 7025/DI 125**



JULY 1, 2023]: Sec. 4. (a) The department shall provide notice in the Indiana Register of the second public comment period required by section 2 of this chapter. A notice provided under this section **In addition to the requirements of IC 4-22-2-23 and (if applicable) IC 4-22-2-24, the notice of public comment submitted by the department to the publisher** must do the following:

(1) ~~Contain the full text of the proposed rule, to the extent required under IC 4-22-2-24(c).~~

(2) **(1)** Contain a summary of the response of the department to written comments submitted under section 3 of this chapter, ~~during the first public comment period.~~ **if applicable.**

(3) **(2)** Request the submission of comments, including suggestions of specific amendments to the language contained in the proposed rule.

(4) ~~Contain the full text of the commissioner's written findings under section 7 of this chapter, if applicable.~~

(5) **(3)** Identify each element of the proposed rule that imposes a restriction or requirement on persons to whom the proposed rule applies that:

(A) is more stringent than a restriction or requirement imposed under federal law; or

(B) applies in a subject area in which federal law does not impose a restriction or requirement.

(6) **(4)** With respect to each element identified under subdivision (5), **(3)**, identify:

(A) the environmental circumstance or hazard that dictates the imposition of the proposed restriction or requirement to protect human health and the environment;

(B) examples in which federal law is inadequate to provide the protection referred to in clause (A); and

(C) the:

(i) estimated fiscal impact; and

(ii) expected benefits;

based on the extent to which the proposed rule is more stringent than the restrictions or requirements of federal law, or on the creation of restrictions or requirements in a subject area in which federal law does not impose restrictions or requirements.

(7) **(5)** For any element of the proposed rule that imposes a restriction or requirement that is more stringent than a restriction or requirement imposed under federal law or that applies in a subject area in which federal law does not impose restrictions or



requirements, describe the availability for public inspection of all materials relied upon by the department in the development of the proposed rule, including, if applicable:

- (A) health criteria;
- (B) analytical methods;
- (C) treatment technology;
- (D) economic impact data;
- (E) environmental assessment data;
- (F) analyses of methods to effectively implement the proposed rule; and
- (G) other background data.

~~(b)~~ **(b)** The notice required under subsection (a):

- ~~(1)~~ **(1)** shall be published electronically in the Indiana Register under procedures established by the publisher; and
- ~~(2)~~ **(2)** if any element of the proposed rule to which the notice relates imposes a restriction or requirement that is more stringent than a restriction or requirement imposed under federal law, shall be submitted in an electronic format under IC 5-14-6 to the executive director of the legislative services agency, who shall present the notice to the legislative council established by IC 2-5-1.1-1.

~~(c)~~ **(b)** If the notice provided by the department concerning a proposed rule identifies ~~under subsection (a)(5)~~, an element of the proposed rule that imposes a restriction or requirement more stringent than a restriction or requirement imposed under federal law, the proposed rule shall not become effective under this chapter until the adjournment sine die of the regular session of the general assembly that begins after the department provides the notice.

~~(d)~~ **(c)** Subsections ~~(b)(2)~~ and ~~(c)~~ **do** **Subsection (b)** does not prohibit or restrict the commissioner, the department, or the board from:

- (1) adopting **emergency provisional** rules under IC 4-22-2-37.1;
- (2) taking emergency action under IC 13-14-10; or
- (3) temporarily:
  - (A) altering ordinary operating policies or procedures; or
  - (B) implementing new policies or procedures;

in response to an emergency situation.

SECTION 44. IC 13-14-9-4.2, AS AMENDED BY P.L.123-2006, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4.2. Not less than fourteen (14) days before the date of preliminary adoption of a proposed rule by a board, the department shall make available to the board the ~~fi~~**scat impact statement latest version of the regulatory analysis** prepared by the



office of management and budget with respect to ~~for~~ the proposed rule. under IC 4-22-2-28(c).

SECTION 45. IC 13-14-9-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4.5. (a) Except for a rule

(1) that has been preliminarily adopted by a board in a form that is:

(A) (1) identical to; or

(B) (2) not substantively different from;

the proposed rule published in a ~~second~~ notice under ~~section 4 of this chapter; or~~

(2) for which the commissioner has made a determination and prepared written findings under section 7 or 8 of this chapter; IC 4-22-2-23 or (if applicable) IC 4-22-2-24;

a board may not adopt a rule under this chapter until the board has conducted a ~~third~~ **an additional** public comment period that is at least ~~twenty-one (21)~~ **thirty (30)** days in length.

(b) The department shall publish notice of a ~~third~~ **an additional** public comment period with the

(1) text;

(2) summary; and

(3) fiscal analysis;

**information that are is** required to be published in the Indiana Register under section 5(a)(2) of this chapter.

(c) The notice of a ~~third~~ public comment period that must be published in the Indiana Register under subsection (b) must request the submission of comments, including suggestions of specific amendments, that concern only the portion of the preliminarily adopted rule that is substantively different from the language contained in the proposed rule published in a ~~second~~ notice under section 4 of this chapter.

SECTION 46. IC 13-14-9-5, AS AMENDED BY P.L.123-2006, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 5. (a) A board may not adopt a rule until all of the following occur:

(1) The board holds a board meeting on the proposed rule.

(2) The department, after approval of the proposed rule by the board under subsection (c), publishes the ~~following~~ **information** in the Indiana Register as ~~provided in IC 4-22-2-24(c):~~

(A) The full text of the proposed rule, including any amendments arising from the comments received before or during the meeting held under subdivision (1).



(B) A summary of the response of the department to all comments received at the meeting held under subdivision (1).  
 (C) For a proposed rule with an estimated economic impact on regulated entities that is greater than five hundred thousand dollars (\$500,000); a copy of the office of management and budget fiscal analysis required under IC 4-22-2-28. **required by section 4 of this chapter. However, a notice of an additional public comment period under section 4.5 of this chapter must request the submission of comments, including suggestions of specific amendments, that concern only the portion of the preliminarily adopted rule that is substantively different from the language contained in the proposed rule published in the immediately preceding notice under section 4 or (if applicable) 4.5 of this chapter.**

(3) The board, after publication of the notice under subdivision (2), holds another board meeting on the proposed rule.

(4) If ~~a third~~ **an additional** public comment period is required under section 4.5 of this chapter, the department publishes notice of the ~~third additional~~ public comment period in the Indiana Register.

(b) Board meetings held under subsection (a)(1) and (a)(3) shall be conducted in accordance with IC 4-22-2-26(b) through IC 4-22-2-26(d).

(c) At a board meeting held under subsection (a)(1), the board shall determine whether the proposed rule will:

- (1) proceed to publication under subsection (a)(2);
- (2) be subject to additional comments under section ~~3 or 4~~ **4.5** of this chapter; ~~considering any written finding made by the commissioner under section 7 or 8 of this chapter;~~ or
- (3) be reconsidered at a subsequent board meeting in accordance with IC 4-22-2-26(d).

SECTION 47. IC 13-14-9-6, AS AMENDED BY P.L.123-2006, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 6. ~~In addition to the requirements of section 8 of this chapter,~~ The department shall include the following in the written materials to be considered at the board meetings held under section 5(a)(1) and 5(a)(3) of this chapter:

- (1) The full text of the proposed rule, as most recently prepared by the department.
- (2) The written responses of the department to all comments received:
  - (A) during the immediately preceding comment period for a



board meeting held under section 5(a)(1) of this chapter;  
 (B) during the immediately preceding board meeting under section 5(a)(1) of this chapter for a board meeting held under section 5(a)(3) of this chapter if a ~~third~~ **an additional** public comment period is not required under section 4.5 of this chapter; or

(C) during:

(i) ~~a third~~ **an additional** public comment period that address the portion of the preliminarily adopted rule that is substantively different from the language contained in the proposed rule published in a ~~second~~ notice under section 4 of this chapter; and

(ii) the immediately preceding board meeting held under section 5(a)(1) of this chapter;

for a board meeting held under section 5(a)(3) of this chapter if a ~~third~~ **an additional** public comment period is required under section 4.5 of this chapter.

(3) The full text of the ~~office of management and budget fiscal latest version of regulatory~~ analysis if a fiscal analysis is required under ~~IC 4-22-2-28~~. **provided to the budget agency and the office of management and budget under IC 4-22-2-22.8.**

SECTION 48. IC 13-14-9-7 IS REPEALED [EFFECTIVE JULY 1, 2023]. Sec. 7: (a) Unless a board determines under section 5(c)(2) of this chapter that a proposed rule should be subject to additional comments, section 3 of this chapter does not apply to a rulemaking action if the commissioner determines that the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under section 3 of this chapter would provide no substantial benefit to:

(1) the environment; or

(2) persons to be regulated or otherwise affected by the proposed rule.

(b) If the commissioner makes a determination under subsection (a); the commissioner shall prepare written findings under this section. The full text of the commissioner's written findings shall be included in the public notice provided under section 4 of this chapter.

SECTION 49. IC 13-14-9-8, AS AMENDED BY P.L.6-2012, SECTION 103, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 8. (a) Except as provided in subsection (g); unless a board determines that a proposed rule should be subject to additional comments or makes a determination described in subsection (f); sections 2 through 7 and sections 9 through 14 of this





chapter do not apply to a rulemaking action if the commissioner determines that:

- (1) the proposed rule constitutes:
  - (A) an adoption or incorporation by reference of a federal law, regulation, or rule that:
    - (i) is or will be applicable to Indiana; and
    - (ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;
  - (B) a technical amendment with no substantive effect on an existing Indiana rule; or
  - (C) an amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and
- (2) the proposed rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in section 7(a)(2) of this chapter from the following:
  - (A) Exposing the proposed rule to diverse public comment under section 3 or 4 of this chapter.
  - (B) Affording interested or affected parties the opportunity to be heard under section 3 or 4 of this chapter.
  - (C) Affording interested or affected parties the opportunity to develop evidence in the record collected under sections 3 and 4 of this chapter.

(b) If the commissioner makes a determination under subsection (a); the commissioner shall prepare written findings under this section. The full text of the commissioner's written findings shall be included in:

- (1) the notice of adoption of the proposed rule; and
- (2) the written materials to be considered by the board at the public hearing held under this section.

(c) The notice of adoption of a proposed rule under this section must:

- (1) be published in the Indiana Register; and
- (2) include the following:
  - (A) Draft rule language that includes the language described in subsection (a)(1).
  - (B) A written comment period of at least thirty (30) days.
  - (C) A notice of public hearing before the appropriate board.

(d) The department shall include the following in the written materials to be considered by the board at the public hearing referred to in subsection (c):

- (1) The full text of the proposed rule as most recently prepared by the department.

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(2) Written responses of the department to written comments received during the comment period referred to in subsection (c);

(3) The commissioner's findings under subsection (b);

(e) At the public hearing referred to in subsection (c), the board may:

(1) adopt the proposed rule;

(2) adopt the proposed rule with amendments;

(3) reject the proposed rule;

(4) determine that additional public comment is necessary; or

(5) determine to reconsider the proposed rule at a subsequent board meeting.

(f) If the board determines under subsection (e) that additional public comment is necessary, the department shall publish a second notice in accordance with section 4 of this chapter and complete the rulemaking in accordance with this chapter.

(g) If the board adopts the proposed rule with amendments under subsection (e)(2), the amendments must meet the logical outgrowth requirements of section 10 of this chapter, except that the board, in determining whether the amendments are a logical outgrowth of comments provided to the board, and in considering whether the language of comments provided to the board fairly apprised interested persons of the specific subjects and issues contained in the amendments, shall consider the comments provided to the board at the public hearing referred to in subsection (e)(2)(C).

(h) This subsection applies to that part of a rule adopted under this section that directly corresponds to and is based on a federal law, rule, or regulation that is stayed or repealed, invalidated, vacated, or otherwise nullified by a legislative, an administrative, or a judicial action described in subdivision (1), (2), or (3). If:

(1) a proposed rule is adopted by a board under subsection (e)(1) based on a determination by the commissioner under subsection (a)(1)(A) and the federal law, rule, or regulation on which the adopted rule is based is later repealed or otherwise nullified by legislative or administrative action, then that part of the adopted rule that corresponds to the repealed or nullified federal law, rule, or regulation is void as of the effective date of the legislative or administrative action repealing or otherwise nullifying the federal law, rule, or regulation;

(2) a board adopts a proposed rule under subsection (e)(1) that is based on a determination by the commissioner under subsection (a)(1)(A) and the federal law, rule, or regulation on which the adopted rule is based is later invalidated, vacated, or otherwise



nullified by a judicial decree, order, or judgment of a state or federal court whose decisions concerning such matters have force and effect in Indiana:

(A) then that part of the rule that corresponds to the invalidated, vacated, or otherwise nullified federal law, rule, or regulation shall not be enforced by the commissioner or any other person during the time in which an appeal of the judicial decree, order, or judgment can be commenced or is pending; and

(B) either:

(i) that part of the adopted rule that corresponds to the invalidated, vacated, or otherwise nullified federal law, rule, or regulation is void as of the date that the judicial decree, order, or judgment becomes final and unappealable; or

(ii) enforcement of the adopted rule is restored if the judicial decree, order, or judgment is reversed, vacated, or otherwise nullified on appeal; and

(3) the **If the commissioner determines that a** federal law, regulation, or rule:

(1) that is the basis of a rule that is adopted under subsection ~~(e)(1)~~ **by the board**; and based on a determination by the commissioner under subsection ~~(a)(1)(A)~~

(2) is stayed by an administrative or a judicial order pending an administrative or a judicial action regarding the validity of the federal law, rule, or regulation;

the commissioner may suspend the enforcement of that part of the adopted rule that corresponds to the stayed federal law, rule, or regulation while the stay is in force.

SECTION 50. IC 13-14-9-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 9. After complying with sections ~~2~~ **4** through ~~8~~ **6** of this chapter, the board may, at the board meeting held under section 5(a)(3) of this chapter:

(1) adopt a rule that is identical to the proposed rule published under section 5(a)(2) of this chapter;

(2) adopt the proposed rule with amendments that meet the criteria set forth in section ~~10~~ of this chapter;

~~(3) (2) recommend amendments to the proposed rule; that do not meet the criteria set forth in section 10 of this chapter;~~

~~(4) (3) reject the proposed rule; or~~

~~(5) (4) reconsider the proposed rule at a subsequent board meeting in accordance with IC 4-22-2-26(d).~~

SECTION 51. IC 13-14-9-10 IS REPEALED [EFFECTIVE JULY



1, 2023]. Sec. 10: (a) A board may amend a proposed rule at a board meeting held under section 5(a)(3) of this chapter and adopt the amended rule under section 9(2) of this chapter if the amendments are a logical outgrowth of:

(1) the proposed rule as published under section 5(a)(2) of this chapter; and

(2) any comments provided to the board at the meeting held under section 5(a)(3) of this chapter.

(b) In determining, for the purposes of this section, whether an amendment is a logical outgrowth of the proposed rule and any comments, the board shall consider:

(1) whether the language of:

(A) the proposed rule as published under section 5(a)(2) of this chapter; and

(B) any comments provided to the board at the meeting held under section 5(a)(3) of this chapter;

fairly apprised interested persons of the specific subjects and issues contained in the amendment; and

(2) whether the interested parties were allowed an adequate opportunity to be heard by the board.

SECTION 52. IC 13-14-9-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 11. If the board recommends amendments to a proposed rule under section ~~9(3)~~ 9(2) of this chapter, the full text of the proposed rule and accompanying amendments shall be published in accordance with section 5(a)(2) of this chapter. After that publication, the board shall hold another board meeting on the proposed rule under section 5(a)(3) of this chapter.

SECTION 53. IC 13-14-9-12, AS AMENDED BY P.L.204-2007, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 12. The board may reject a proposed rule under section ~~9(4)~~ 9 of this chapter if one (1) of the following conditions exists:

(1) The following occurs or has occurred:

(A) under section 8 of this chapter, sections 3 and 4 of this chapter did not apply to the proposed rule; and

(B) either:

(i) (1) The board determines that necessary amendments to the proposed rule will affect persons that reasonably require an opportunity to comment under section 4 of this chapter, considering the criteria set forth in section 8(a)(2) of this chapter; or

(ii) (2) The board determines that due to the fundamental or



inherent structure or content of the proposed rule, the only reasonably anticipated method of developing a rule acceptable to the board is to require the department to redraft the rule and to obtain the public comments under section 4 of this chapter.

(2) ~~The following occurs or has occurred:~~

~~(A) the proposed rule was subject to sections 3 and 4 of this chapter; and~~

~~(B) either:~~

~~(i) the board makes a determination set forth in subdivision (1)(B)(i) or (1)(B)(ii); or~~

~~(ii) (3) The board determines that, due to a procedural or other defect in the implementation of the applicable rulemaking requirements, under sections 3 and 4 of this chapter, an interested or affected party will be unfairly and substantially prejudiced if the public comment period under section 4 of this chapter is not again afforded and that no reasonable alternative method to obtain public comments is available to the interested or affected party other than the public comment period under section 4 of this chapter.~~

SECTION 54. IC 13-14-9-14, AS AMENDED BY P.L.133-2012, SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 14. (a) Except as provided in subsection (g), sections 1 through 13 of this chapter do not apply to a rule adopted under this section.

(b) The board may use the procedures in this section to adopt a rule to establish new water quality standards for a community served by a combined sewer that has:

- (1) an approved long term control plan; and
- (2) an approved use attainability analysis that supports the use of a CSO wet weather limited use subcategory established under IC 13-18-3-2.5.

(c) After the department approves the long term control plan and use attainability analysis, the department shall publish in the Indiana Register a notice of adoption of a proposed rule to establish a CSO wet weather limited use subcategory for the area defined by the approved use attainability analysis.

(d) The notice under subsection (c) must include the following:

- (1) Suggested rule language that amends the designated use to allow for a CSO wet weather limited use subcategory in accordance with IC 13-18-3-2.5.
- (2) A written comment period of at least thirty (30) days.

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(3) A notice of public hearing before the board.

(e) The department shall include the following in the written materials to be considered by the board at the public hearing referred to in subsection (d)(3):

(1) The full text of the proposed rule as most recently prepared by the department.

(2) Written responses of the department to written comments received during the comment period referred to in subsection (d)(2).

(3) The letter prepared by the department approving the long term control plan and use attainability analysis.

(f) At the public hearing referred to in subsection (d)(3), the board may:

(1) adopt the proposed rule to establish a new water quality standard amending the designated use to allow for a CSO wet weather limited use subcategory;

(2) adopt the proposed rule with amendments;

(3) reject the proposed rule; or

(4) determine to reconsider the proposed rule at a subsequent board meeting.

(g) If the board adopts the proposed rule with amendments under subsection (f)(2), the amendments must meet the **substantially similar or** logical outgrowth requirements of ~~section 10 of this chapter, except that~~ **IC 4-22-2-29(c)**. The board, in determining whether the amendments are a logical outgrowth of comments provided to the board, and in considering whether the language of comments provided to the board fairly apprised interested persons of the specific subjects and issues contained in the amendments, shall consider the comments provided to the board at the public hearing referred to in subsection (d)(3).

(h) The department shall submit a new water quality standard established in a rule adopted under subsection (f) to the United States Environmental Protection Agency for approval.

SECTION 55. IC 13-14-9-15 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2023]: **Sec. 15. Rules adopted in accordance with this chapter by the department of environmental management or a board that has rulemaking authority under this title expire as provided in IC 4-22-2.6.**

SECTION 56. IC 13-14-9-16 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2023]: **Sec. 16. (a) For a rule document**



subject to this chapter, the one (1) year period established under IC 4-22-2-25 in which to adopt a rule and obtain the approval or deemed approval of the governor commences on the date that the initial comment period notice for the rule document is published in the Indiana Register under section 4 of this chapter.

(b) If an agency determines that a rule cannot be adopted within one (1) year after the publication of the notice, the department shall, before two hundred fifty (250) days following the publication of the notice, notify the publisher by electronic means:

(1) the reasons why the rule was not adopted and the expected date the rule will be completed; and

(2) the expected date the rule will be approved or deemed approved by the governor or withdrawn under IC 4-22-2-41.

(c) If a rule is not approved before the later of:

(1) one (1) year after the department publishes the initial notice of intent under this chapter; or

(2) the expected date contained in a notice concerning the rule that is provided to the publisher under subsection (b);

a later approval or deemed approval is ineffective, and the rule may become effective only through another rulemaking action initiated under this chapter."

Delete pages 53 through 61.

Page 62, delete lines 1 through 9.

Page 64, between lines 30 and 31, begin a new paragraph and insert:

"SECTION 51. IC 14-10-2-5, AS AMENDED BY P.L.164-2020, SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 5. (a) The department may adopt ~~emergency~~ rules under ~~IC 4-22-2-37.~~ IC 4-22-2 to carry out the duties of the department under the following:

(1) IC 14-9.

(2) This article.

(3) IC 14-11.

(4) IC 14-12-2.

(5) IC 14-14.

(6) IC 14-15.

(7) IC 14-17-3.

(8) IC 14-18, except IC 14-18-6 and IC 14-18-8.

(9) IC 14-19-1 and IC 14-19-8.

(10) IC 14-21.

(11) IC 14-22-3, IC 14-22-4, and IC 14-22-5.

(12) IC 14-23-1.

(13) IC 14-24.



- (14) IC 14-25, except IC 14-25-8-3 and IC 14-25-13.
- (15) IC 14-26.
- (16) IC 14-27.
- (17) IC 14-28.
- (18) IC 14-29.
- (19) IC 14-35-1, IC 14-35-2, and IC 14-35-3.
- (20) IC 14-37.
- (21) IC 14-38, except IC 14-38-3.

(b) ~~A~~ **An emergency rule adopted under subsection (a) (as effective before July 1, 2023)** expires not later than one (1) year after the rule is accepted for filing by the publisher of the Indiana Register.

(c) A person who violates:

- (1) an emergency rule adopted by the department **under IC 4-22-2-37.1 before July 1, 2023; or**
- (2) **an interim rule adopted by the department under IC 4-22-2-37.2 after June 30, 2023;**

**to carry out a provision described in subsection (a)** commits a Class C infraction, unless otherwise specified under state law.

SECTION 52. IC 15-16-4-31, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 31. As used in this chapter, "pesticide for use by prescription only" means any pesticide that:

- (1) the board has found to be more hazardous than a restricted use pesticide so that any specific use and application must be determined and prescribed by a qualified pest management specialist approved by the state chemist; **and**
- (2) **is designated as a pesticide for use by prescription only in a rule of the board or a law enacted by the general assembly.**

SECTION 53. IC 15-16-4-37, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 37. As used in this chapter, "restricted use pesticide" means **the following:**

- (1) Any pesticide classified as a restricted use pesticide by the administrator of the United States Environmental Protection Agency ~~or~~ **(as of March 31, 2023).**
- (2) **A pesticide designated as a pesticide in a law enacted by the general assembly.**
- ~~(2)~~ (3) **Subject to section 50 of this chapter,** a pesticide that the board has determined to be unduly hazardous to persons, animals, plants, wildlife, waters, or lands other than the pests it is intended to prevent, destroy, control, or mitigate.
- (4) **All formulations containing methomyl (Chemical**





**Abstracts Service Reg. No. 16752-77-5).**

**(5) Any dicamba containing pesticide product that:**

**(A) contains a dicamba active ingredient concentration greater than or equal to six and one-half percent (6.5%); and**

**(B) is intended for agricultural production uses but is not labeled solely for use on turf or other nonagricultural use sites.**

SECTION 54. IC 15-16-4-50, AS AMENDED BY P.L.99-2012, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 50. (a) The board may ~~adopt rules under IC 4-22-2 to do the following:~~

~~(1) Establish a list of~~ **recommend to the general assembly the addition, deletion, or reclassification of pesticides by submitting in an electronic format under IC 5-14-6 a report of the recommendations to the legislative council. In making a determination to add or reclassify a pesticide as a restricted use pesticide and pesticide or pesticides pesticide for use by prescription only for all of Indiana or designated areas within Indiana, if the board finds must find that the characteristics of a pesticide require that rules restricting the:**

~~(A) (1) sale;~~

~~(B) (2) distribution; or~~

~~(C) (3) use;~~

of the pesticide by any person are necessary to prevent undue hazards to persons, animals, wildlife, lands, or waters, other than the pests that they are intended to prevent, destroy, control, or mitigate. **After considering the factors enumerated in this subsection, the board shall make findings and recommendations concerning the control of the substance if it finds the substance. If any substance is designated or reclassified to a more restrictive schedule as a pesticide under federal law and notice is given to the board, the board shall recommend similar control of the substance under this article in the board's report to the general assembly, unless the board objects to inclusion or rescheduling. In that case, the board shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the board shall publish its findings in the Indiana Register.**

~~(b) The board may adopt rules under IC 4-22-2 to do the following:~~

~~(1) Reclassify a pesticide:~~

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(A) from a more restrictive classification to a less restrictive classification; or

(B) as a substance that is not a pesticide;

if the board finds that the substance qualifies for reclassification under this chapter and that the same reclassification has been made in a classification under federal law. If the board reclassifies a substance under this subdivision, the board shall recommend the same reclassification to the general assembly under subsection (a). If the board objects to rescheduling or deletion of the substance, the board shall notify the chair of the legislative council not more than thirty (30) days after the federal law is changed and the substance may not be reclassified or deleted until the conclusion of the next complete session of the general assembly. The notice from the board to the chair of the legislative council must be published in the Indiana Register. Notwithstanding a provision in this chapter that classifies a pesticide in a more restrictive classification than a rule adopted under this subdivision, a person who manufactures, distributes, dispenses, possesses, or uses a pesticide in compliance with the requirements applicable to the less restrictive classification to which the pesticide is reclassified under this subdivision does not commit a violation of law. Notwithstanding a provision in this chapter that classifies a substance as a pesticide, a person does not commit a violation of law if the board has reclassified the pesticide as a substance that is not a pesticide.

(2) Provide for the safe:

- (A) handling;
- (B) transportation;
- (C) storage;
- (D) display;
- (E) distribution;
- (F) disposal; and
- (G) production;

of pesticide products and pesticide containers.

(3) Restrict or prohibit the use of certain types of containers or packages for specific pesticides. The restrictions may apply to the:

- (A) type of construction;
- (B) strength; or
- (C) size;

to alleviate danger of spillage, breakage, or misuse.



(b) The board may adopt by reference the restricted use classification of a pesticide that is maintained by the United States Environmental Protection Agency.

(c) The board may adopt rules **under IC 4-22-2** to do the following:

(1) Determine the time and conditions of the:

- (A) sale;
- (B) distribution; or
- (C) use;

of pesticide products.

(2) Require that any or all pesticide products be purchased, possessed, or used only under:

- (A) permit;
- (B) certificate;
- (C) license; or
- (D) registration;

of the state chemist or under certain conditions or in certain quantities or concentrations.

(3) Require all persons issued:

- (A) permits;
- (B) certificates;
- (C) licenses; or
- (D) registrations;

under this subsection to maintain records as to the use of the pesticide products.

**(d) A rule adopted under this chapter that becomes effective after June 30, 2023, may not impose a restriction or requirement more stringent than a restriction or requirement imposed under federal law unless the restriction or requirement is specifically authorized by Indiana law.**

**(e) The state chemist shall maintain a list of each class of pesticides adopted by Indiana law or board rule on the website for the state chemist. Failure to include a pesticide on the list does not exempt a person from compliance with a law or rule for a pesticide designated by law or rule.**

SECTION 55. IC 15-16-4-52, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 52. The state chemist may adopt rules under IC 4-22-2 to administer this chapter, including rules providing for the following:

- (1) The collection and examination of samples of pesticide products.
- (2) Determining whether a pesticide product is highly toxic to



humans or wildlife.

(3) The issuance of permits to purchase, possess, or use "restricted use pesticides" and "pesticides for use by prescription only".

(4) Determining standards of coloring or discoloring for pesticide products and to subject pesticide products to the requirements of section 57 of this chapter.

**A rule described in this section that becomes effective after June 30, 2023, may not impose a restriction or requirement concerning pesticides more stringent than a restriction or requirement imposed under federal law unless the restriction or requirement is specifically authorized by Indiana law.**

SECTION 56. IC 15-16-4-57, AS AMENDED BY P.L.99-2012, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 57. Except as provided in section 58 of this chapter, a person may not produce, distribute, display, sell, or offer for sale within Indiana or deliver for transportation or transport in intrastate commerce or between points within Indiana through any point outside Indiana any of the following:

(1) Any pesticide product that has not been registered under section 61 of this chapter.

(2) Any pesticide product if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration.

(3) A pesticide product if the composition of the product differs from the composition as represented in connection with its registration. However, at the discretion of the state chemist, a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product.

(4) Any pesticide product (except a bulk pesticide or a pesticide in a container designed and constructed to accommodate the return and refill of the container) unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to that container, and to any outside container or wrapper of the retail package through which the required information on the immediate container cannot be clearly read, a label bearing:

(A) the name and address of the manufacturer, registrant, or person for whom manufactured;

(B) the name, brand, or trademark under which the pesticide product is sold; and

(C) the net weight or measure of the content, subject, however,



to reasonable variations as the state chemist may permit.

- (5) Any pesticide product that is adulterated or misbranded.
- (6) Any pesticide product in containers violating rules adopted under section ~~50(a)(3)~~ **50(b)(3)** of this chapter. Pesticides found in containers that are unsafe due to damage may be seized and impounded.
- (7) A highly volatile herbicide except on written permission by the state chemist.
- (8) Any bulk pesticide unless it is accompanied in all transfers of custody or ownership by or held in storage vessels to which is affixed a label bearing the information specified in subdivision (4).
- (9) Any pesticide that violates the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) or regulations adopted under the Act.

SECTION 57. IC 15-16-5-72 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 72. A rule adopted under this chapter that becomes effective after June 30, 2023, may not impose a restriction or requirement concerning pesticides more stringent than a restriction or requirement imposed under federal law unless the restriction or requirement is specifically authorized by Indiana law."**

Page 64, between lines 36 and 37, begin a new line block indented and insert:

**"(2) "Applicant" has the meaning set forth in IC 25-1-5-11."**

Page 64, line 37, delete "(2)" and insert "(3)".

Page 64, line 38, delete "(3)" and insert "(4)".

Page 64, delete lines 40 through 41, begin a new line block indented and insert:

**"(5) "Enactment date" means the date on which a statute requires rulemaking for a licensure rule to become effective or otherwise requires rulemaking to commence."**

Page 64, line 42, delete "(5)" and insert "(6)".

Page 65, line 2, delete "(6)" and insert "(7)".

Page 65, line 3, delete "(7)" and insert "(8)".

Page 65, between lines 9 and 10, begin a new line block indented and insert:

**"(9) "Material detriment" means:**

**(A) an inability to obtain a license, certification, permit, or other credential from the agency or a board;**

**(B) an inability to:**



- (i) practice;
  - (ii) perform a procedure; or
  - (iii) engage in a particular professional activity in Indiana or another jurisdiction; or
- (C) any other substantial burden to professional or business interests."

Page 65, line 10, delete "(8)" and insert "(10)".

Page 65, line 11, after "adopted" insert "as an interim rule under IC 4-22-2-37.2".

Page 65, line 12, delete "eighteen (18)" and insert "six (6)".

Page 65, delete lines 13 through 42, begin a new paragraph and insert:

**"Sec. 2. (a) If a licensee or applicant believes that the agency or a board has failed to adopt a licensure rule within six (6) months of the enactment date, an applicant or licensee who has suffered a material detriment as a result of a noncompliant licensure rule may seek damages from the agency or board by bringing an action in a court of competent jurisdiction.**

**(b) A court shall not certify a class in any matter seeking damages under this section.**

**(c) In a matter seeking damages under this section, a court may order the following:**

**(1) An injunction requiring adoption of a compliant interim licensure rule not earlier than six (6) months from the date of the order.**

**(2) Damages equal to the amount of the material detriment caused by the noncompliant licensure rule, including prospective damages through the date established under subdivision (1).**

**(3) Court costs and attorney's fees.**

**(d) IC 34-13-3 applies to an action brought under this section.**

SECTION 58. IC 27-1-44.5-11, AS ADDED BY P.L.195-2021, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 11. (a) The department shall adopt ~~emergency~~ rules under ~~IC 4-22-2-37.1~~ IC 4-22-2 to implement this chapter. The rules must include a requirement that health payer data sources submit necessary information to the administrator. Rules enacted under this subsection must cover all health payer data sources as follows:

(1) The department shall adopt rules that apply to health payers regulated under IC 27.

(2) The office of the secretary of family and social services shall adopt rules that apply to health payers regulated under IC 12.



(b) The department shall adopt **emergency provisional** rules under IC 4-22-2-37.1 establishing a fee formula for data licensing and the collection and release of claims data.

(c) The department may impose a civil penalty on a health payer that is required to submit information under this chapter and fails to comply. A civil penalty collected under this section must be deposited in the department of insurance fund created by IC 27-1-3-28."

Page 66, delete lines 1 through 37, begin a new paragraph and insert:

"SECTION 59. IC 34-52-2-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 1.5. (a) In a proceeding under IC 4-21.5-5 to judicially review a final order made by a state agency, the court shall apply the same standard as an administrative law judge under IC 4-21.5-3-27.5 regarding an order for the payment of attorney's fees.**

**(b) An order for the payment of attorney's fees under this section is not subject to sections 2 and 4 of this chapter."**

Page 66, line 39, delete "an emergency" and insert "**a provisional**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1623 as printed February 14, 2023.)

BROWN L, Chairperson

Committee Vote: Yeas 6, Nays 4.

