



CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1623

Citations Affected: IC 2-5; IC 4-3-22-13; IC 4-12-2-4; IC 4-21.5; IC 4-22; IC 5-28-17-6; IC 12-10.5; IC 13-14; IC 13-19-3-3; IC 14-10-2-5; IC 15-16; IC 25-1; IC 27-1-44.5-11; IC 34-52-2-1.5.

Synopsis: Administrative law. Establishes the government reform task force (task force). Provides for members of the task force. Requires the task force to submit a report. Prohibits the consideration of the number or amount of fines or civil penalties imposed on regulated entities by an employee in an agency's evaluation or compensation of the employee. 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 public comment period and allows a proposed rule to be adopted after one public 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 provisional or interim 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 for disposal of coal combustion residuals to be more stringent than federal standards. Allows for certain rules on restricted use pesticides that are more stringent than federal law. Permits a person to recover attorney's 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 Repeals superseded statutes and makes cross-reference, name, and other conforming changes. **(This conference committee report does the following: (1) Adds HB 1200 which: (A) establishes the government reform task force (task force); (B) provides for members of the task force; (C) requires the task force to submit a report; and (D) prohibits the consideration of the number or amount of fines or civil penalties imposed on regulated**



entities by an employee in an agency's evaluation or compensation of the employee. (2) Removes the requirement for legislative approval when the EPA classifies a pesticide as restricted use and allows for rules on restricted use pesticides that are more stringent than federal law. (3) Resolves a conflict with HEA 1626. (4) Makes technical and conforming changes to the bill.)

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



Adopted	Rejected
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CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill No. 1623 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 2-5-46 IS REPEALED [EFFECTIVE UPON
- 3 PASSAGE]. (Administrative Rules Review Task Force).
- 4 SECTION 2. IC 2-5-53 IS ADDED TO THE INDIANA CODE AS
- 5 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
- 6 PASSAGE]:
- 7 **Chapter 53. Government Reform Task Force**
- 8 **Sec. 1. As used in this chapter, "agency" has the meaning set**
- 9 **forth in IC 4-22-2-3.**
- 10 **Sec. 2. As used in this chapter, "council" refers to the legislative**
- 11 **council established by IC 2-5-1.1-1.**
- 12 **Sec. 3. As used in this chapter, "rule" has the meaning set forth**
- 13 **in IC 4-22-2-3.**
- 14 **Sec. 4. As used in this chapter, "task force" refers to the**
- 15 **government reform task force established by section 5 of this**
- 16 **chapter.**
- 17 **Sec. 5. The government reform task force is established.**
- 18 **Sec. 6. (a) Except as provided in subsections (b), (c), (d), and (e),**
- 19 **IC 2-5-1.2 applies to the task force.**

1 **(b) The task force consists of the following ten (10) members of**
 2 **the general assembly:**

3 **(1) Three (3) members appointed by the president pro**
 4 **tempore of the senate.**

5 **(2) Two (2) members appointed by the minority leader of the**
 6 **senate.**

7 **(3) Three (3) members appointed by the speaker of the house**
 8 **of representatives.**

9 **(4) Two (2) members appointed by the minority leader of the**
 10 **house of representatives.**

11 **A member of the task force serves at the pleasure of the appointing**
 12 **authority.**

13 **(c) The task force shall meet as called by the chair. All meetings**
 14 **of the task force shall be open to the public in accordance with and**
 15 **subject to IC 5-14-1.5. All records of the task force shall be subject**
 16 **to the requirements of IC 5-14-3.**

17 **(d) A majority of the members of the task force constitutes a**
 18 **quorum. The affirmative vote of at least a majority of the members**
 19 **at a meeting at which a quorum is present is necessary for the task**
 20 **force to take official action other than to meet and take testimony.**

21 **(e) The:**

22 **(1) chairman of the legislative council shall designate the**
 23 **chair; and**

24 **(2) vice chairman of the legislative council shall designate the**
 25 **vice chair;**

26 **of the task force from the members of the task force. The chair and**
 27 **vice chair of the task force serve as chair and vice chair at the**
 28 **pleasure of the appointing authority.**

29 **Sec. 7. The task force shall do the following:**

30 **(1) Review external policies and standards of procedure**
 31 **implemented by agencies.**

32 **(2) Study any other issues related to agency oversight, as**
 33 **determined by the task force.**

34 **Sec. 8. The task force may request information or testimony**
 35 **from department or agency heads, or the designee of a department**
 36 **or agency head, as determined necessary by the task force.**

37 **Sec. 9. The task force shall:**

38 **(1) develop recommendations in a report for the general**
 39 **assembly concerning the issues set forth in section 7 of this**
 40 **chapter; and**

41 **(2) not later than November 1, 2023, and before November 1**
 42 **of each year thereafter, submit the report to the executive**
 43 **director of the legislative services agency for distribution to**
 44 **the members of the general assembly. The report submitted**
 45 **to the executive director of the legislative services agency**
 46 **under this subdivision must be in an electronic format under**
 47 **IC 5-14-6.**

48 **Sec. 10. The legislative services agency shall provide support**
 49 **staff to the task force.**

50 **Sec. 11. This chapter expires December 31, 2025.**

51 **SECTION 3. IC 4-3-22-13, AS AMENDED BY P.L.5-2015,**

1 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2023]: Sec. 13. (a) Except as provided in subsection (e); the
3 OMB shall perform a cost benefit analysis upon each proposed rule and
4 provide to:

5 (1) the governor; and

6 (2) the legislative council;

7 an assessment of the rule's effect on Indiana business. The OMB shall
8 submit the cost benefit analysis to the legislative council in an
9 electronic format under IC 5-14-6.

10 (b) After June 30, 2005, the cost benefit analysis performed by the
11 OMB under this section with respect to any proposed rule that has an
12 impact of at least five hundred thousand dollars (\$500,000) shall
13 replace and be used for all purposes under IC 4-22-2 in lieu of the
14 fiscal analysis previously performed by the legislative services agency
15 under IC 4-22-2.

16 (c) **The OMB and the budget agency shall review a regulatory**
17 **analysis and proposed rule submitted by an agency under**
18 **IC 4-22-2-22.8.** In preparing a cost benefit reviewing a regulatory
19 analysis **and proposed rule** under this section, the OMB shall consider
20 in its analysis any verified data provided voluntarily by interested
21 parties, regulated persons, and nonprofit corporations whose members
22 may be affected by the proposed rule. A **cost benefit regulatory**
23 **analysis prepared reviewed** under this section is a public document,
24 subject to the following:

25 (1) This ~~subsection~~ **section** does not empower the OMB or an
26 agency to require an interested party or a regulated person to
27 provide any materials, documents, or other information. ~~in~~
28 ~~connection with a cost benefit analysis under this section.~~ If an
29 interested party or a regulated person voluntarily provides
30 materials, documents, or other information to the OMB or an
31 agency, ~~in connection with a cost benefit analysis under this~~
32 ~~section,~~ the OMB or the agency, as applicable, shall ensure the
33 adequate protection of any:

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

35 (B) confidential and proprietary business plans and other
36 confidential information.

37 (2) If an agency has adopted rules to implement IC 5-14-3-4,
38 interested parties and regulated persons must submit the
39 information in accordance with the confidentiality rules adopted
40 by the agency to ensure proper processing of confidentiality
41 claims. The OMB and any agency involved in proposing the rule,
42 or in administering the rule upon the rule's adoption, shall
43 exercise all necessary caution to avoid disclosure of any
44 confidential information supplied to the OMB or the agency by an
45 interested party or a regulated person.

46 (2) ~~The OMB shall make the cost benefit analysis and other~~
47 ~~related public documents available to interested parties; regulated~~
48 ~~persons; and nonprofit corporations whose members may be~~
49 ~~affected by the proposed rule at least thirty (30) days before~~
50 ~~presenting the cost benefit analysis to the governor and the~~

- 1 legislative council under subsection (a).
- 2 (d) If the OMB or an agency is unable to obtain verified data for the
- 3 cost benefit analysis described in subsection (c); the OMB shall state
- 4 in the cost benefit analysis which data were unavailable for purposes
- 5 of the cost benefit analysis.
- 6 (e) If the OMB finds that a proposed rule is:
- 7 (1) an adoption or incorporation by reference of a federal law;
- 8 regulation; or rule that has no substantive effect on the scope or
- 9 intended application of the federal law or rule; or
- 10 (2) a technical amendment with no substantive effect on an
- 11 existing Indiana rule;
- 12 the OMB may not prepare a cost benefit analysis of the rule under this
- 13 section. The agency shall submit the proposed rule to the OMB with a
- 14 statement explaining how the proposed rule meets the requirements of
- 15 this subsection. If the OMB finds that the rule meets the requirements
- 16 of this subsection; the OMB shall provide its findings to the governor
- 17 and to the legislative council in an electronic format under IC 5-14-6.
- 18 If the agency amends or modifies the proposed rule after the OMB
- 19 finds that a cost benefit analysis may not be prepared for the rule; the
- 20 agency shall resubmit the proposed rule to the OMB either for a new
- 21 determination that the rule meets the requirements of this subsection;
- 22 or for the OMB to prepare a cost benefit analysis of the rule under this
- 23 section.
- 24 SECTION 4. IC 4-12-2-4 IS ADDED TO THE INDIANA CODE
- 25 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 26 1, 2023]: **Sec. 4. An agency may not consider the number or amount**
- 27 **of fines or civil penalties imposed on regulated entities by an**
- 28 **employee in the evaluation or compensation of the employee.**
- 29 SECTION 5. IC 4-21.5-2-8 IS ADDED TO THE INDIANA CODE
- 30 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 31 1, 2023]: **Sec. 8. The amendments made to IC 4-21.5-3-27.5 and the**
- 32 **addition of IC 34-52-2-1.5 in the 2023 session of the general**
- 33 **assembly only apply to agency actions commenced under**
- 34 **IC 4-21.5-3 after June 30, 2023.**
- 35 SECTION 6. IC 4-21.5-3-27.5, AS ADDED BY P.L.199-2021,
- 36 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 37 JULY 1, 2023]: **Sec. 27.5. In a proceeding under this chapter**
- 38 **concerning an agency action, the administrative law judge shall order**
- 39 **the agency to pay the reasonable attorney's fees incurred in the**
- 40 **proceeding by the prevailing party challenging the agency action if:**
- 41 (1) the party challenging the agency action proves, by a
- 42 preponderance of the evidence, that:
- 43 (1) (A) the agency's action was frivolous or groundless; or
- 44 (2) (B) the agency pursued the action in bad faith;
- 45 (2) the agency action was based on an invalid rule, as
- 46 provided in IC 4-22-2-44; or
- 47 (3) the agency has failed to demonstrate that the agency acted
- 48 within its legal authority.
- 49 SECTION 7. IC 4-22-2-0.1, AS AMENDED BY P.L.53-2014,
- 50 SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

1 JULY 1, 2023]: Sec. 0.1. (a) The amendments made to this chapter by
2 P.L.44-1995 apply as follows:

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

6 (2) The addition of sections 23.1 and 46 (repealed) of this chapter
7 applies to a rulemaking action that commences after June 30,
8 1995.

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

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

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

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

23 (2) implements, interprets, or prescribes:

24 (A) law or policy; or

25 (B) the organization, procedure, or practice requirements of an
26 agency.

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

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

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

33 (e) "Person" means an individual, corporation, limited liability
34 company, partnership, unincorporated association, or governmental
35 entity.

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

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

40 SECTION 9. IC 4-22-2-13, AS AMENDED BY P.L.2-2007,
41 SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 2023]: Sec. 13. (a) Subject to subsections (b), (c), and (d), this
43 chapter applies to the addition, amendment, or repeal of a rule in every
44 rulemaking action.

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

46 (1) Any military officer or board.

47 (2) Any state educational institution.

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

50 (1) A resolution or directive of any agency that relates solely to
51 internal policy, internal agency organization, or internal procedure

- 1 and does not have the effect of law.
- 2 (2) A restriction or traffic control determination of a purely local
- 3 nature that:
- 4 (A) is ordered by the commissioner of the Indiana department
- 5 of transportation;
- 6 (B) is adopted under IC 9-20-1-3(d), IC 9-21-4-7, or
- 7 IC 9-20-7; and
- 8 (C) applies only to one (1) or more particularly described
- 9 intersections, highway portions, bridge causeways, or viaduct
- 10 areas.

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

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

13 **(5) A rule adopted by the board of trustees of the Indiana**

14 **public retirement system, as provided in IC 5-10.5-4-2.**

15 **However, the board shall submit rules adopted by the board**

16 **to the publisher for publication in the Indiana Register.**

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

18 **(1) IC 13-14-9 provides supplemental procedures for notice**

19 **and public comment concerning proposed rules for the boards**

20 **listed in IC 13-14-9-1; and**

21 **(2) the department of environmental management and the**

22 **boards listed in IC 13-14-9-1 shall comply with the procedures**

23 **in IC 13-14-9 in lieu of complying with sections ~~24~~, 26, 27, and**

24 **29 (except section 29(c)) of this chapter. ~~do not apply to~~**

25 **rulemaking actions under IC 13-14-9.**

26 **In adopting rules, all other provisions of IC 4-22-2 apply to these**

27 **agencies.**

28 SECTION 10. IC 4-22-2-15 IS AMENDED TO READ AS

29 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 15. Any rulemaking

30 action that this chapter allows or requires an agency to perform, other

31 than final adoption of a rule under section 29, ~~or~~ 37.1, **or 37.2** of this

32 chapter **or IC 13-14-9**, may be performed by the individual or group of

33 individuals with the statutory authority to adopt rules for the agency, a

34 member of the agency's staff, or another agent of the agency. Final

35 adoption of a rule under section 29, ~~or~~ 37.1, **or 37.2** of this chapter **or**

36 **IC 13-14-9**, including readoption of a rule that is subject to sections 24

37 through 36 or to section 37.1 of this chapter and recalled for further

38 consideration under section 40 of this chapter, may be performed only

39 by the individual or group of individuals with the statutory authority to

40 adopt rules for the agency.

41 SECTION 11. IC 4-22-2-17 IS AMENDED TO READ AS

42 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 17. (a) IC 5-14-3

43 applies to the text of a rule that an agency intends to adopt from the

44 earlier of the date that the agency takes any action under ~~section 24~~

45 **section 23** of this chapter, otherwise notifies the public of its intent to

46 adopt a rule under any statute, or adopts the rule.

47 (b) IC 5-14-3 applies both to a rule and to the full text of a matter

48 directly or indirectly incorporated by reference into the rule.

49 **(c) Subject to subsection (e), after June 30, 2023, a public**

50 **hearing or other public meeting in which an agency receives**

51 **comments concerning a rulemaking action from the general public**

1 must be webcast on the state website during the hearing or meeting
 2 for the public to view the proceedings. Webcasts must be archived
 3 as public records on the state website.

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

9 (e) The office of management and budget in consultation with
 10 the office of technology and the publisher shall establish how and
 11 where webcasts will be available, how agencies will provide
 12 opportunities for the general public to attend and comment
 13 remotely, and where notices of upcoming webcasts will be posted.
 14 The governor, by executive order, may delay the implementation
 15 of subsection (c) or (d), or both, for one (1) or more agencies if the
 16 governor finds that implementation of subsection (c) or (d), or
 17 both, is not technically feasible. The governor shall include specific
 18 findings concerning the reasons for a delay in the executive order.
 19 A delay under this subsection may not extend beyond December 31,
 20 2025.

21 (f) Inadequacy or insufficiency of webcasting, archive of
 22 webcasting, or remote access under this section or a statement in
 23 a notice of the availability of webcasting, archive of webcasting, or
 24 remote access does not invalidate a rulemaking action.

25 SECTION 12. IC 4-22-2-17.5 IS ADDED TO THE INDIANA
 26 CODE AS A NEW SECTION TO READ AS FOLLOWS
 27 [EFFECTIVE JULY 1, 2023]: Sec. 17.5. (a) The legislative services
 28 agency shall provide electronic summaries or electronic copies of
 29 documents submitted to the publisher under this article or
 30 IC 13-14-9 to legislators and legislative committees in the manner
 31 and on the schedule specified by the legislative council or the
 32 personnel subcommittee of the legislative council acting for the
 33 legislative council.

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

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

47 (†) required to receive or maintain:

48 (A) (1) delegation;

49 (B) (2) primacy; or

50 (C) (3) approval;

51 for state implementation or operation of a program established

- 1 under federal law.
- 2 (2) that amend an existing rule;
- 3 (3) required or authorized by statutes enacted before June 30,
- 4 1995; or
- 5 (4) required or authorized by statutes enacted before June 30,
- 6 1995; and recodified in the same or similar form after June 29,
- 7 1995; in response to a program of statutory recodification
- 8 conducted by the code revision commission.

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

- 13 (e) However, an agency shall:
- 14 (1) begin ~~the~~ a rulemaking process **needed to implement the**
- 15 **statutory change** not later than sixty (60) days after the effective
- 16 date of the statute that authorizes the rule; or
- 17 (2) if an agency cannot comply with subdivision (1), provide
- 18 electronic notice to the publisher stating the reasons for the
- 19 agency's noncompliance.

20 (c) **For purposes of this section, a rulemaking process is**
 21 **commenced when:**

- 22 (1) **the agency publishes a proposed rule under section 23 or**
- 23 **37.2 of this chapter; or**
- 24 (2) **in the case of a change in a statute described in section 38**
- 25 **of this chapter, the agency files with the publisher a rule**
- 26 **document under section 38 of this chapter.**

27 **Except as otherwise provided in IC 4-22-2.3, if an interim**
 28 **rulemaking procedure is commenced under section 37.2 of this**
 29 **chapter, the agency shall commence a permanent rulemaking**
 30 **process under section 23 of this chapter before the adopted interim**
 31 **rule expires.**

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

- 36 (1) Minimize the expenses to:
 - 37 (A) regulated entities that are required to comply with the rule;
 - 38 (B) persons who pay taxes or pay fees for government services
 - 39 affected by the rule; and
 - 40 (C) consumers of products and services of regulated entities
 - 41 affected by the rule.
- 42 (2) Achieve the regulatory goal in the least restrictive manner.
- 43 (3) Avoid duplicating standards found in state or federal laws.
- 44 (4) Be written for ease of comprehension.
- 45 (5) Have practicable enforcement.

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

48 SECTION 15. IC 4-22-2-19.6 IS ADDED TO THE INDIANA
 49 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
 50 [EFFECTIVE JANUARY 1, 2023 (RETROACTIVE)]: **Sec. 19.6. (a)**
 51 **A rule adopted under this article or IC 13-14-9 that includes a fee,**

1 fine, or civil penalty must comply with this section. Subsections (b),
 2 (c), and (d) do not apply to a rule that must be adopted in a certain
 3 form to comply with federal law.

4 (b) For each fee, fine, or civil penalty imposed by an agency that
 5 is not set as a specific amount in a state law, a rule must describe
 6 the circumstances for which the agency will assess a fee, fine, or
 7 civil penalty and set forth the amount of the fee, fine, or civil
 8 penalty:

9 (1) as a specific dollar amount;

10 (2) under a formula by which a specific dollar amount can be
 11 reasonably calculated by persons regulated or otherwise
 12 affected by the rule; or

13 (3) as a range of potential dollar amounts, stating the factors
 14 that the agency will utilize to set a specific dollar amount in an
 15 individual case with sufficient certainty that a review of an
 16 agency action under IC 4-21.5 or comparable process can
 17 evaluate whether the amount was reasonable.

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

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

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

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

30 (2) The number of previous violations committed by the
 31 offender of laws, rules, or programs administered by the
 32 agency.

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

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

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

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

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

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

44 (B) reviewed by the budget committee:

45 (i) in the case of the department of environmental
 46 management, the boards listed in IC 13-14-9-1, the office
 47 of environmental adjudication, the natural resources
 48 commission, the department of natural resources, the
 49 Indiana gaming commission, and the Indiana horse
 50 racing commission, before December 31, 2023; and

51 (ii) in the case of an agency not described in item (i),

- 1 **before July 1, 2024; and**
 2 **(C) included in a rule that complies with this section and**
 3 **becomes effective before:**
 4 **(i) in the case of the department of environmental**
 5 **management, the boards listed in IC 13-14-9-1, the office**
 6 **of environmental adjudication, the natural resources**
 7 **commission, the department of natural resources, the**
 8 **Indiana gaming commission, and the Indiana horse**
 9 **racing commission, December 31, 2024; and**
 10 **(ii) in the case of an agency not described in item (i), July**
 11 **1, 2025; or**
 12 **(3) the agency withdraws or otherwise ceases to enforce or**
 13 **apply the fee, fine, or civil penalty before:**
 14 **(A) in the case of the department of environmental**
 15 **management, the boards listed in IC 13-14-9-1, the office**
 16 **of environmental adjudication, the natural resources**
 17 **commission, the department of natural resources, the**
 18 **Indiana gaming commission, and the Indiana horse racing**
 19 **commission, December 31, 2023; and**
 20 **(B) in the case of an agency not described in clause (A),**
 21 **July 1, 2024.**
 22 **Readoption without changes under IC 4-22-2.6 of a nonconforming**
 23 **fee, fine, or civil penalty that meets the requirements of subdivision**
 24 **(1) or (2) does not invalidate the nonconforming fee, fine, or civil**
 25 **penalty.**
 26 **(f) Beginning January 1, 2024, an agency shall post on its**
 27 **website a schedule of fines and civil penalties that apply to**
 28 **violations of laws, rules, and requirements of federal programs**
 29 **administered by the agency.**
 30 SECTION 16. IC 4-22-2-21, AS AMENDED BY P.L.204-2016,
 31 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2023]: Sec. 21. (a) If incorporation of the text in full would be
 33 cumbersome, expensive, or otherwise inexpedient, an agency may
 34 incorporate by reference into a rule part or all of any of the following
 35 matters:
 36 (1) A federal or state statute, rule, or regulation.
 37 (2) A code, manual, or other standard adopted by an agent of the
 38 United States, a state, or a nationally recognized organization or
 39 association.
 40 (3) A manual of the department of local government finance
 41 adopted in a rule described in IC 6-1.1-31-9.
 42 (4) The following requirements:
 43 (A) The schedule, electronic formatting, and standard data,
 44 field, and record coding requirements for:
 45 (i) the electronic data file under IC 6-1.1-4-25 concerning
 46 the parcel characteristics and parcel assessments of all
 47 parcels and personal property return characteristics and
 48 assessments; and
 49 (ii) the electronic data file under IC 36-2-9-20 concerning
 50 the tax duplicate.
 51 (B) The schedule, electronic formatting, and standard data,

1 field, and record coding requirements for data required to be
2 submitted under IC 6-1.1-5.5-3 or IC 6-1.1-11-8.

3 (C) Data export and transmission format requirements for
4 information described in clauses (A) and (B).

5 (b) Each matter incorporated by reference under subsection (a) must
6 be fully and exactly described.

7 (c) An agency may refer to a matter that is directly or indirectly
8 referred to in a primary matter by fully and exactly describing the
9 primary matter.

10 (d) **Except as otherwise provided in this article**, whenever an
11 agency submits a rule to the attorney general, the governor, or the
12 publisher under this chapter, the agency shall also submit a copy of the
13 full text of each matter incorporated by reference under subsection (a)
14 into the rule, other than the following:

15 (1) An Indiana statute or rule.

16 (2) A form or instructions for a form numbered by the Indiana
17 archives and record administration under IC 5-15-5.1-6.

18 (3) The source of a statement that is quoted or paraphrased in full
19 in the rule.

20 (4) Any matter that has been previously filed with the:

21 (A) secretary of state before July 1, 2006; or

22 (B) publisher after June 30, 2006.

23 (5) Any matter referred to in subsection (c) as a matter that is
24 directly or indirectly referred to in a primary matter.

25 (e) An agency may comply with subsection (d) by submitting a
26 paper or an electronic copy of the full text of the matter incorporated
27 by reference.

28 SECTION 17. IC 4-22-2-22.5, AS AMENDED BY P.L.72-2014,
29 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
30 JULY 1, 2023]: Sec. 22.5. (a) This section applies to a rule that an
31 agency intends to:

32 **(1) adopt under sections ~~24~~ 23 through 36 of this chapter or**
33 **section 37.2 of this chapter;**

34 **(2) adopt under IC 13-14-9; or**

35 **(3) readopt under IC 4-22-2.6.**

36 (b) As used in this section, "pending rulemaking action" means any
37 rulemaking action in which:

38 (1) either:

39 (A) a notice of ~~intent~~ **a public comment period** has been
40 published under section 23 **or 37.2** of this chapter; ~~or~~

41 (B) a rulemaking action has been commenced under
42 IC 13-14-9; ~~and or~~

43 **(C) a rulemaking action has been commenced under**
44 **IC 4-22-2.6; and**

45 (2) the rule has not become effective under section 36 of this
46 chapter.

47 (c) Each agency shall maintain a current rulemaking docket that is
48 indexed.

49 (d) A current rulemaking docket must list each pending rulemaking
50 action. The docket must state or contain:

- 1 (1) the subject matter of the proposed rule;
 2 (2) notices related to the proposed rule, or links to the Indiana
 3 Register where these notices may be viewed;
 4 (3) how comments may be made;
 5 (4) the time within which comments may be made;
 6 (5) where comments and the agency's written response to those
 7 comments may be inspected;
 8 (6) the date, time, and place where a public hearing required
 9 under:
 10 (A) section 26 of this chapter; or
 11 (B) IC 13-14-9;
 12 will be held;
 13 (7) a description of relevant scientific and technical findings
 14 related to the proposed rule, if applicable; and
 15 (8) a reasonable estimate of the timetable for action, updated
 16 periodically as circumstances change, if necessary.
- 17 (e) The agency shall maintain the rulemaking docket on the agency's
 18 ~~internet web site: website.~~ The information must be in an open format
 19 that can be easily searched and downloaded. Access to the docket shall,
 20 to the extent feasible and permitted by law, provide an opportunity for
 21 public comment on the pertinent parts of the rulemaking docket,
 22 including relevant scientific and technical findings. Upon request, the
 23 agency shall provide a written rulemaking docket.
- 24 SECTION 18. IC 4-22-2-22.7 IS ADDED TO THE INDIANA
 25 CODE AS A NEW SECTION TO READ AS FOLLOWS
 26 [EFFECTIVE JULY 1, 2023]: **Sec. 22.7. (a) Before complying with**
 27 **section 22.8 of this chapter, an agency shall conduct a regulatory**
 28 **analysis for the proposed rule that complies with the requirements**
 29 **of this section.**
- 30 **(b) The office of management and budget shall set standards for**
 31 **the criteria, analytical method, treatment technology, economic,**
 32 **fiscal, and other background data to be used by an agency in the**
 33 **regulatory analysis. The regulatory analysis must be submitted in**
 34 **a form that can be easily loaded into commonly used business**
 35 **analysis software and published in the Indiana Register using the**
 36 **format jointly developed by the publisher, the office of**
 37 **management and budget, and the budget agency. The office of**
 38 **management and budget may provide more stringent requirements**
 39 **for rules with fiscal impacts and costs above a threshold amount**
 40 **determined by the office of management and budget.**
- 41 **(c) At a minimum, the regulatory analysis must include findings**
 42 **and any supporting data, studies, or analyses prepared for a rule**
 43 **that demonstrate compliance with the following:**
- 44 **(1) The cost benefit requirements in IC 4-3-22-13.**
 45 **(2) Each of the standards in section 19.5 of this chapter.**
 46 **(3) If applicable, the requirements for fees, fines, and civil**
 47 **penalties in section 19.6 of this chapter.**
 48 **(4) The annual economic impact on small businesses statement**
 49 **required under IC 4-22-2.1-5.**
 50 **(5) If applicable, the information required under**
 51 **IC 13-14-9-4.**

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

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

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

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

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

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

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

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

17 **SECTION 19. IC 4-22-2-22.8 IS ADDED TO THE INDIANA**
 18 **CODE AS A NEW SECTION TO READ AS FOLLOWS**
 19 **[EFFECTIVE JULY 1, 2023]: Sec. 22.8. (a) After conducting a**
 20 **regulatory analysis under section 22.7 of this chapter, if an agency**
 21 **elects to adopt a rule subject to section 23 of this chapter or**
 22 **IC 13-14-9, the agency shall submit a request to the budget agency**
 23 **and the office of management and budget to authorize**
 24 **commencement of the public comment periods under this chapter**
 25 **or IC 13-14-9 (as applicable). The request must include the**
 26 **following:**

27 **(1) A general description of the subject matter of the proposed**
 28 **rule.**

29 **(2) The full text of the proposed rule (including a copy of any**
 30 **matter incorporated by reference under section 21 of this**
 31 **chapter) in the form required by the publisher, including**
 32 **citations to any related authorizing and affected Indiana**
 33 **statutes.**

34 **(3) The regulatory analysis, including supporting data,**
 35 **prepared under section 22.7 of this chapter.**

36 **(4) Any other information required by the office of**
 37 **management and budget.**

38 **(b) The budget agency and the office of management and budget**
 39 **shall expedite the review of the request to adopt a rule. The budget**
 40 **agency and the office of management and budget may do the**
 41 **following:**

42 **(1) Return the request to the agency with a statement**
 43 **describing any additional information needed to authorize or**
 44 **disapprove further rulemaking actions on one (1) or more of**
 45 **the rules in the request.**

46 **(2) Authorize the commencement of the public comment**
 47 **periods on one (1) or more of the rules in the request with or**
 48 **without changes.**

49 **(3) Disapprove commencement of the public comment periods**
 50 **on one (1) or more of the rules with a statement of reasons for**
 51 **the disapproval.**

1 (c) If an agency has requested authorization for more than one
 2 (1) rule in the same request, the budget agency and the office of
 3 management and budget may make separate determinations with
 4 respect to some or all of the rules in the request. Approval of a
 5 request shall be treated as a determination that the review
 6 conducted and findings made by the agency comply with the
 7 requirements of section 22.7 of this chapter and this section. The
 8 budget agency and the office of management and budget may not
 9 approve any part of a proposed rule that adds or amends language
 10 to increase or expand application of a fee, fine, or civil penalty or
 11 a schedule of fees, fines, or civil penalties before submitting the
 12 proposed rule to the budget committee for review.

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

18 (e) If an agency revises a proposed rule after the budget agency
 19 and the office of management and budget authorize
 20 commencement of the public comment periods, the agency must
 21 obtain a new notice of determination under subsection (d). The
 22 agency shall resubmit to the budget agency and the office of
 23 management and budget the revised proposed rule and a revised
 24 regulatory analysis with sufficient information for the budget
 25 agency and the office of management and budget to determine the
 26 impact the revisions have on the regulatory analysis previously
 27 reviewed by the budget agency and the office of management and
 28 budget. After obtaining a new notice of determination, the agency
 29 shall submit to the publisher the new notice of determination, the
 30 revised proposed rule, and the revised regulatory analysis.

31 SECTION 20. IC 4-22-2-23, AS AMENDED BY P.L.152-2012,
 32 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2023]: Sec. 23. (a) This section does not apply to rules
 34 adopted under IC 4-22-2-37.1.

35 (b) (a) At least twenty-eight (28) days before an agency notifies the
 36 public of the agency's intention to adopt a rule under section 24 of this
 37 chapter, the agency shall notify the public of its intention to adopt a
 38 rule by publishing a notice of intent to adopt a rule in the Indiana
 39 Register. An agency shall provide notice in the Indiana Register of
 40 the first public comment period required by this section. To
 41 publish notice of the first public comment period in the Indiana
 42 Register, the agency must submit the following to the publisher:

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

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

50 (3) The latest version of the regulatory analysis submitted to
 51 the budget agency and the office of management and budget

1 under section 22.8 of this chapter.

2 (4) The determination of the budget agency and the office of
3 management and budget authorizing commencement of the
4 public comment periods.

5 (5) If the proposed rule adds or amends language to increase
6 or expand application of a fee, fine, or civil penalty or a
7 schedule of fees, fines, or civil penalties, the agenda of the
8 budget committee meeting at which the rule was scheduled for
9 review.

10 (6) The notice required under subsection (b).

11 (b) The publication notice of the first public comment period must
12 include the following:

13 (1) A general description of the subject matter of the proposed
14 rule.

15 (2) An overview of the intent and scope of the proposed rule and
16 the statutory authority for the rule.

17 (3) The latest version of the regulatory analysis submitted to
18 the budget agency and the office of management and budget
19 under section 22.8 of this chapter, excluding any appendices
20 containing any data, studies, or analyses referenced in the
21 regulatory analysis.

22 (4) Information concerning where, when, and how a person
23 may submit written comments on the proposed rule, including
24 contact information concerning the small business regulatory
25 coordinator required by section 28.1 of this chapter.

26 (5) Information concerning where, when, and how a person
27 may inspect and copy the regulatory analysis, and any data,
28 studies, or analyses referenced under subdivision (3).

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

32 (7) An indication that, if the agency does not receive any
33 substantive comments during the public comment period or
34 public hearing, the agency may adopt a rule that is the same
35 as or does not substantially differ from the text of the
36 proposed rule published under this section.

37 **Inadequacy or insufficiency of the published description or**
38 **regulatory analysis in a notice published under this section does**
39 **not invalidate a rulemaking action.**

40 (c) The requirement to publish a notice of intent to adopt a rule
41 under subsection (b) does not apply to rulemaking under IC 13-14-9.

42 (d) In addition to the procedures required by this article, an agency
43 may solicit comments from the public on the need for a rule, the
44 drafting of a rule, or any other subject related to a rulemaking action,
45 including members of the public who are likely to be affected because
46 they are the subject of the potential rulemaking or are likely to benefit
47 from the potential rulemaking. The procedures that the agency may use
48 include the holding of conferences and the inviting of written
49 suggestions, facts, arguments, or views.

50 (e) The agency shall prepare a written response that contains a
51 summary of the comments received during any part of the rulemaking

1 process. The written response is a public document. The agency shall
2 make the written response available to interested parties upon request.

3 **(c) Although the agency may comply with the publication**
4 **requirements of this section on different days, the agency must**
5 **comply with all of the publication requirements of this section at**
6 **least thirty (30) days before the public hearing required by section**
7 **26 of this chapter is convened.**

8 **(d) The publisher shall review materials submitted under this**
9 **section and determine the date that the publisher intends to publish**
10 **the text of the proposed rule and the notice in the Indiana Register.**
11 **If the submitted material complies with this section, the publisher**
12 **shall establish the intended publication date, assign a document**
13 **control number to the proposed rule, and provide a written or an**
14 **electronic mail authorization to proceed to the agency. The**
15 **publisher shall publish the following in the Indiana Register on the**
16 **intended publication date:**

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

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

22 SECTION 21. IC 4-22-2-23.1, AS AMENDED BY P.L.123-2006,
23 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
24 JULY 1, 2023]: Sec. 23.1. ~~(a) This section and section 19(b) of this~~
25 ~~chapter do not apply to rules adopted under IC 4-22-2-37.1.~~

26 ~~(b) Before or after an agency notifies the public of its intention to~~
27 ~~adopt a rule under section 24 of this chapter, submits a request to the~~
28 ~~budget agency and the office of management and budget under~~
29 ~~section 22.8 of this chapter, the agency may solicit comments from all~~
30 ~~or any segment of the public on the need for a rule, the drafting of a~~
31 ~~rule, or any other subject related to a rulemaking action. The~~
32 ~~procedures that the agency may use include the holding of conferences~~
33 ~~and the inviting of written suggestions, facts, arguments, or views. An~~
34 ~~agency's failure to consider comments received under this section does~~
35 ~~not invalidate a rule subsequently adopted.~~

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

41 ~~(b) The agency shall cause a notice of a public hearing to be~~
42 ~~published once in one (1) newspaper of general circulation in Marion~~
43 ~~County, Indiana. To publish the newspaper notice, the agency shall~~
44 ~~directly contract with the newspaper. An agency may not contract for~~
45 ~~the publication of a notice under this chapter until the agency has~~
46 ~~received a written or an electronic authorization to proceed from the~~
47 ~~publisher under subsection (g):~~

48 **(a) If:**

49 **(1) an agency receives substantive comments during the first**
50 **public comment period or the public hearing under section 23**
51 **of this chapter; or**

1 (2) the rule establishes a requirement or limitation that is
 2 more stringent than an applicable federal requirement or
 3 limitation;

4 the agency must conduct a second public comment period under
 5 this section.

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

10 (1) The full text of the agency's proposed rule (excluding the full
 11 text of a matter incorporated by reference under section 21 of this
 12 chapter) to be published once in the Indiana Register. To publish
 13 the notice and proposed rule in the Indiana Register, the agency
 14 shall submit the text to the publisher in accordance with
 15 subsection (g). The agency shall submit the rule in the form
 16 required by section 20 of this chapter. and with The agency also
 17 shall submit the documents required by section 21 of this chapter
 18 (if the agency has not previously provided the publisher with
 19 the documents). The publisher shall determine the number of
 20 copies of the rule and other documents to be submitted under this
 21 subsection: subdivision.

22 (2) The notice required under subsection (c).

23 (d) (c) The agency shall include the following in the second public
 24 comment period notice required by subsections (b) and (c): published
 25 in the Indiana Register:

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

29 (2) A general description of the subject matter of the proposed
 30 rule.

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

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

34 (B) not expressly required by:

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

36 (ii) any other state or federal law.

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

41 (4) an explanation that:

42 (A) the proposed rule; and

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

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

46 (3) A summary of the written comments received by the
 47 agency during the first public comment period and a
 48 summary of the response of the agency to written comments
 49 submitted under section 23 of this chapter during the first
 50 public comment period.

51 (4) Either a statement indicating that no changes in the

1 regulatory analysis have been made from the version of the
 2 regulatory analysis published under section 23 of this chapter
 3 or the latest version of the regulatory analysis (excluding any
 4 appendices containing any data, studies, or analyses
 5 referenced in the regulatory analysis) submitted to the budget
 6 agency and the office of management and budget under
 7 section 22.8 of this chapter, if any changes have been made in
 8 the regulatory analysis after submitting the material to the
 9 publisher under section 23 of this chapter.

10 (5) An explanation of any differences between the text of the
 11 proposed rule published for the first public comment period
 12 under section 23 of this chapter and the text of the proposed
 13 rule published for the second public comment period under
 14 this section.

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

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

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

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

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

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

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

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

47 (1) establishing the intended publication date; and

48 (2) receiving the public hearing information specified in
 49 subsection (d) from the agency;

50 the publisher shall If the submitted material complies with this
 51 section, the publisher shall establish the intended publication date,

1 **assign a document control number to the proposed rule, and**
 2 provide a written or an electronic mail authorization to proceed to the
 3 agency. **The publisher shall publish the following in the Indiana**
 4 **Register on the intended publication date:**

- 5 (1) **The notice of the second public comment period, including**
 6 **any information required under IC 13-14-9-4 (if applicable).**
 7 (2) **The full text of the agency's proposed rule (excluding the**
 8 **full text of a matter incorporated by reference under section**
 9 **21 of this chapter).**

10 SECTION 23. IC 4-22-2-25, AS AMENDED BY P.L.5-2015,
 11 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2023]: Sec. 25. (a) An agency has one (1) year from the date
 13 that it publishes a notice of ~~intent to adopt a rule~~ in the Indiana Register
 14 ~~under section 23 of this chapter to comply with sections 26 through 33~~
 15 ~~of this chapter of the first public comment period under section 23~~
 16 **of this chapter to comply with sections 23 through 33 of this**
 17 **chapter** and obtain the approval or deemed approval of the governor.
 18 If an agency determines that a rule cannot be adopted within one (1)
 19 year after the publication of the notice of ~~intent to adopt a rule~~ **the first**
 20 **public comment period** under section 23 of this chapter, the agency
 21 shall, before the two hundred fiftieth day following the publication of
 22 the notice of ~~intent to adopt a rule~~ **the first public comment period**
 23 under section 23 of this chapter, notify the publisher by electronic
 24 means:

- 25 (1) the reasons why the rule was not adopted and the expected
 26 date the rule will be completed; and
 27 (2) the expected date the rule will be approved or deemed
 28 approved by the governor or withdrawn under section 41 of this
 29 chapter.

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

- 31 (1) one (1) year after the agency publishes notice of ~~intent to~~
 32 ~~adopt the rule~~ **the first public comment period** under section 23
 33 of this chapter; or
 34 (2) the expected date contained in a notice concerning the rule
 35 that is provided to the publisher under subsection (a);

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

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

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

47 (c) The agency may conduct the public hearing in any informal
 48 manner that allows for an orderly presentation of comments and avoids
 49 undue repetition. However, the agency shall afford any person
 50 attending the public hearing an adequate opportunity to comment on

1 the agency's proposed rule through the presentation of oral and written
2 facts or argument.

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

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

7 (2) recording the announcement in the agency's record of the
8 public hearing.

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

11 SECTION 25. IC 4-22-2-27 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 27. The individual or
13 group of individuals who will finally adopt the rule under section 29 of
14 this chapter shall fully consider comments received **by the agency**
15 **during each public comment period and comments received** at the
16 public hearing hearings required by ~~section~~ **sections 23, 24, and 26** of
17 this chapter and may consider any other information before adopting
18 the rule. Attendance at the public hearing or review of a written record
19 or summary of the public hearing is sufficient to constitute full
20 consideration.

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

33 SECTION 27. IC 4-22-2-28, AS AMENDED BY P.L.237-2017,
34 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
35 JULY 1, 2023]: Sec. 28. (a) The following definitions apply throughout
36 this section:

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

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

42 (b) The ombudsman:

43 (1) shall review a proposed rule that

44 ~~(A)~~ imposes requirements or costs on small businesses (as
45 defined in IC 4-22-2.1-4); ~~and~~

46 ~~(B)~~ is referred to the ombudsman by an agency under
47 ~~IC 4-22-2.1-5(c); and~~

48 (2) may review a proposed rule that imposes requirements or
49 costs on businesses other than small businesses (as defined in
50 IC 4-22-2.1-4).

51 After conducting a review under subdivision (1) or (2), the ombudsman

1 may suggest alternatives to reduce any regulatory burden that the
 2 proposed rule imposes on small businesses or other businesses. The
 3 agency that intends to adopt the proposed rule shall respond in writing
 4 to the ombudsman concerning the ombudsman's comments or
 5 suggested alternatives before adopting the proposed rule under section
 6 29 of this chapter.

7 (c) Subject to subsection (e) and not later than fifty (50) days before
 8 the public hearing for a proposed rule required by section 26 of this
 9 chapter, an agency shall submit the proposed rule to the office of
 10 management and budget for a review under subsection (d); if the
 11 agency proposing the rule determines that the rule will have a total
 12 estimated economic impact greater than five hundred thousand dollars
 13 (\$500,000) on all regulated persons. In determining the total estimated
 14 economic impact under this subsection, the agency shall consider any
 15 applicable information submitted by the regulated persons affected by
 16 the rule. To assist the office of management and budget in preparing
 17 the fiscal impact statement required by subsection (d), the agency shall
 18 submit, along with the proposed rule, the data used and assumptions
 19 made by the agency in determining the total estimated economic
 20 impact of the rule.

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

29 (1) the state; and

30 (2) all persons regulated by the proposed rule.

31 The fiscal impact statement must contain the total estimated economic
 32 impact of the proposed rule and a determination concerning the extent
 33 to which the proposed rule creates an unfunded mandate on a state
 34 agency or political subdivision. The fiscal impact statement is a public
 35 document. The office of management and budget shall make the fiscal
 36 impact statement available to interested parties upon request and to the
 37 agency proposing the rule. The agency proposing the rule shall
 38 consider the fiscal impact statement as part of the rulemaking process
 39 and shall provide the office of management and budget with the
 40 information necessary to prepare the fiscal impact statement, including
 41 any economic impact statement prepared by the agency under
 42 IC 4-22-2.1-5. The office of management and budget may also receive
 43 and consider applicable information from the regulated persons
 44 affected by the rule in preparation of the fiscal impact statement.

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

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

50 (2) the office of management and budget shall prepare the fiscal

1 impact statement referred to in subsection (d) not later than
 2 twenty-one (21) days before the proposed date of preliminary
 3 adoption of the proposed rule:

4 (f) In determining whether a proposed rule has a total estimated
 5 economic impact greater than five hundred thousand dollars
 6 (\$500,000); the agency proposing the rule shall consider the impact of
 7 the rule on any regulated person that already complies with the
 8 standards imposed by the rule on a voluntary basis:

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

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

11 (A) the rule is gradually made to apply to certain regulated
 12 persons; or

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

14 (2) the rule applies to all regulated persons that will be affected
 15 by the rule:

16 In determining the total estimated economic impact of a proposed rule
 17 under this section, the agency proposing the rule shall consider the
 18 annual economic impact on all regulated persons beginning with the
 19 first twelve (12) month period after the rule is fully implemented. The
 20 agency may use actual or forecasted data and may consider the actual
 21 and anticipated effects of inflation and deflation. The agency shall
 22 describe any assumptions made and any data used in determining the
 23 total estimated economic impact of a rule under this section:

24 (h) An agency shall provide the legislative council in an electronic
 25 format under IC 5-14-6 with any analysis, data, and description of
 26 assumptions submitted to the office of management and budget under
 27 this section or section 40 of this chapter at the same time the agency
 28 submits the information to the office of management and budget. The
 29 office of management and budget shall provide the legislative council
 30 in an electronic format under IC 5-14-6 any fiscal impact statement and
 31 related supporting documentation prepared by the office of
 32 management and budget under this section or section 40 of this chapter
 33 at the same time the office of management and budget provides the
 34 fiscal impact statement to the agency proposing the rule. Information
 35 submitted under this subsection must identify the rule to which the
 36 information is related by document control number assigned by the
 37 publisher:

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

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

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

49 (3) a requirement in IC 4-22-2.1-5 to prepare a statement that
 50 describes the annual economic impact of a rule on all small

1 businesses after the rule is fully implemented;

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

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

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

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

18 SECTION 28. IC 4-22-2-28.1, AS AMENDED BY P.L.237-2017,
19 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
20 JULY 1, 2023]: Sec. 28.1. (a) This section applies to the following:

21 (1) A rule for which the notice required by section 23 of this
22 chapter or by IC 13-14-9-3 is published by an agency or the board
23 (as defined in IC 13-13-8-1).

24 (2) A rule for which:

25 (A) the notice required by IC 13-14-9-3; or

26 (B) an appropriate later notice for circumstances described in
27 subsection (g);

28 is published by the department of environmental management
29 after June 30, 2006.

30 (b) (a) As used in this section, **The following definitions apply**
31 **throughout this section:**

32 (1) "Coordinator" refers to the small business regulatory
33 coordinator assigned to a rule by an agency under subsection (e).

34 (b).

35 (e) As used in this section, (2) "Director" refers to the director or
36 other administrative head of an agency.

37 (d) As used in this section, (3) "Small business" has the meaning set
38 forth in IC 5-28-2-6.

39 (e) (b) For each rulemaking action and rule finally adopted as a
40 result of a rulemaking action by an agency, ~~under this chapter~~, the
41 agency shall assign one (1) staff person to serve as the agency's small
42 business regulatory coordinator with respect to the proposed or adopted
43 rule. The agency shall assign a staff person to a rule under this
44 subsection based on the person's knowledge of, or experience with, the
45 subject matter of the rule. A staff person may serve as the coordinator
46 for more than one (1) rule proposed or adopted by the agency if the
47 person is qualified by knowledge or experience with respect to each
48 rule. Subject to subsection (f):

49 (1) in the case of a proposed rule; the notice of intent to adopt the
50 rule **The first public comment period notice** published under

1 section 23 of this chapter ~~or~~
 2 (2) in the case of a rule proposed by the department of
 3 environmental management or the board (as defined in
 4 IC 13-13-8-1); the notice published under IC 13-14-9-3 or the
 5 findings published under IC 13-14-9-8(b)(1), whichever applies;
 6 must include the name, address, telephone number, and electronic mail
 7 address of the small business coordinator for the proposed rule, the
 8 name, address, telephone number, and electronic mail address of the
 9 small business ombudsman designated under IC 5-28-17-6, and a
 10 statement of the resources available to regulated entities through the
 11 small business ombudsman designated under IC 5-28-17-6. ~~Subject to~~
 12 ~~subsection (f)~~; In the case of a rule finally adopted, the final rule, as
 13 published in the Indiana Register, must include the name, address,
 14 telephone number, and electronic mail address of the coordinator.

15 ~~(f)~~ (c) This subsection applies to a rule adopted by the department
 16 of environmental management or the board (as defined in
 17 IC 13-13-8-1) under IC 13-14-9. ~~Subject to subsection (g)~~; **listed in**
 18 **IC 13-14-9-1. In addition to the information required by subsection**
 19 **(b)**, the department **and a board** shall include in the notice provided
 20 under IC 13-14-9-3 or in the findings published under
 21 IC 13-14-9-8(b)(1), whichever applies; **section 23 of this chapter** and
 22 in the publication of the final rule in the Indiana Register:

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

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

28 (3) if applicable, a statement of:

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

32 (B) the name, address, telephone number, and electronic mail
 33 address of the ombudsman for small business designated under
 34 IC 13-28-5-2(3). ~~and~~

35 ~~(4) the information required by subsection (e)~~.

36 The coordinator assigned to the rule ~~under subsection (e)~~ shall work
 37 with the ombudsman described in subdivision (2) and the office of
 38 voluntary compliance established by IC 13-28-1-1 to coordinate the
 39 provision of services required under subsection ~~(h)~~ (d) and IC 13-28-3.
 40 If applicable, the coordinator assigned to the rule ~~under subsection (e)~~
 41 shall work with the ombudsman referred to in subdivision (3)(B) to
 42 coordinate the provision of services required under ~~subsection (h)~~ **this**
 43 **section** and IC 13-28-5.

44 (g) If the notice provided under IC 13-14-9-3 is not published as
 45 allowed by IC 13-14-9-7, the department of environmental
 46 management shall publish in the notice provided under IC 13-14-9-4
 47 the information that subsection (f) would otherwise require to be
 48 published in the notice under IC 13-14-9-3. If neither the notice under
 49 IC 13-14-9-3 nor the notice under IC 13-14-9-4 is published as allowed
 50 by IC 13-14-9-8, the department of environmental management shall

1 ~~publish in the commissioner's written findings under IC 13-14-9-8(b)~~
 2 ~~the information that subsection (f) would otherwise require to be~~
 3 ~~published in the notice under IC 13-14-9-3.~~

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

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

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

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

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

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

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

32 (2) electronically through electronic gateway access.

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

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

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

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

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

46 (1) compile the records received from all of the agency's
 47 coordinators under subsection ~~(j)~~; (f);

48 (2) prepare a report that sets forth:

49 (A) the number of comments, complaints, and questions
 50 received by the agency from small businesses during the most

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

15 SECTION 29. IC 4-22-2-28.2, AS AMENDED BY P.L.133-2012,
 16 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2023]: Sec. 28.2. (a) This section applies to a violation
 18 described in subsection (c) that occurs after June 30, 2005. However,
 19 in the case of a violation of a rule adopted under IC 13-14-9 by the
 20 department of environmental management or the board (as defined in
 21 IC 13-13-8-1), the procedures set forth in IC 13-30-4-3 and IC 13-30-7
 22 apply instead of this section.

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

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

- 30 (1) Provides written notice of the violation to the agency not later
 31 than forty-five (45) days after the small business knew or should
 32 have known that the violation occurred.
 33 (2) Corrects the violation within a time agreed to by the agency
 34 and the small business. However, the small business shall be
 35 given at least ninety (90) days after the date of the notice
 36 described in subdivision (1) to correct the violation. The small
 37 business may correct the violation at any time before the
 38 expiration of the period agreed to under this subdivision.
 39 (3) Cooperates with any reasonable request by the agency in any
 40 investigation initiated in response to the notice.

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

- 44 (1) The violation resulted in serious harm or in imminent and
 45 substantial endangerment to the public health, safety, or welfare.
 46 (2) The violation resulted in a substantial economic benefit that
 47 afforded the small business a clear advantage over the small
 48 business's competitors.
 49 (3) The small business has a pattern of continuous or repeated
 50 violations of the rule at issue or any other rules of the agency.

1 (e) Information that a small business provides under this section,
 2 including actions and documents that identify or describe the small
 3 business, to an agency in providing notice of the small business's actual
 4 or potential violation of a rule adopted by the agency is confidential,
 5 unless a clear and immediate danger to the public health, safety, or
 6 welfare or to the environment exists. Information described in this
 7 subsection may not be made available for use by the agency for
 8 purposes other than the purposes of this section without the consent of
 9 the small business.

10 (f) Voluntary notice of an actual or a potential violation of a rule
 11 that is provided by a small business under subsection (c) is not
 12 admissible as evidence in a proceeding, other than an agency
 13 proceeding, to prove liability for the rule violation or the effects of the
 14 rule violation.

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

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

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

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

29 (3) subject to subsection (c), adopt part of one (1) or more
 30 proposed rules described in subdivision (2) in two (2) or more
 31 separate adoption actions; or

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

37 (c) **Subject to IC 13-14-9-4.5 (if applicable)**, an agency may not
 38 adopt a rule that substantially differs from the version or versions of the
 39 proposed rule or rules published in the Indiana Register under section
 40 **23 or 24** of this chapter, **or IC 13-14-9-14 (as applicable)**, unless it is
 41 a logical outgrowth of any proposed rule as supported by any written
 42 **and public hearing** comments submitted:

43 (1) during the public comment period; or

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

46 SECTION 31. IC 4-22-2-31, AS AMENDED BY P.L.123-2006,
 47 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 48 JULY 1, 2023]: Sec. 31. After an agency has complied with section 29
 49 of this chapter, ~~or with IC 13-14-9-9(1) or IC 13-14-9-9(2)~~, **adopted**
 50 **the rule in conformity with IC 13-14-9**, as applicable, the agency

1 shall submit its rule to the attorney general for approval. The agency
2 shall submit the following to the attorney general:

- 3 (1) The rule in the form required by section 20 of this chapter.
- 4 (2) The documents required by section 21 of this chapter.
- 5 (3) Written authorization to proceed issued by the publisher under
6 ~~section 24(g)~~ **sections 23 and 24** of this chapter **or IC 13-14-9-4,**
7 **IC 13-14-9-5, or IC 13-14-9-14, as applicable.**
- 8 (4) Any other documents specified by the attorney general.

9 The attorney general may require the agency to submit any supporting
10 documentation that the attorney general considers necessary for the
11 attorney general's review under section 32 of this chapter. The agency
12 may submit any additional supporting documentation the agency
13 considers necessary.

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

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

- 22 (1) The extent to which all persons affected by the adopted rule
23 should have understood from the published rule or rules that their
24 interests would be affected.
- 25 (2) The extent to which the subject matter of the adopted rule or
26 the issues determined in the adopted rule are different from the
27 subject matter or issues that were involved in the published rule
28 or rules.
- 29 (3) The extent to which the effects of the adopted rule differ from
30 the effects that would have occurred if the published rule or rules
31 had been adopted instead.

32 In the review, the attorney general shall consider whether the adopted
33 rule may constitute the taking of property without just compensation to
34 an owner.

35 (c) Except as provided in subsections (d) and (h), the attorney
36 general shall disapprove a rule under this section only if it:

- 37 (1) has been adopted without statutory authority;
- 38 (2) has been adopted without complying with this chapter;
- 39 (3) does not comply with requirements under section 29 of this
40 chapter; or
- 41 (4) violates another law.

42 Otherwise, the attorney general shall approve the rule without making
43 a specific finding of fact concerning the subjects.

44 (d) If an agency submits a rule to the attorney general without
45 complying with section 20(a)(2) of this chapter, the attorney general
46 may:

- 47 (1) disapprove the rule; or
- 48 (2) return the rule to the agency without disapproving the rule.

49 (e) If the attorney general returns a rule under subsection (d)(2), the
50 agency may bring the rule into compliance with section 20(a)(2) of this

1 chapter and resubmit the rule to the attorney general without readopting
2 the rule.

3 (f) If the attorney general determines in the course of the review
4 conducted under subsection (b) that a rule may constitute a taking of
5 property, the attorney general shall advise the following:

- 6 (1) The governor.
7 (2) The agency head.

8 Advice given under this subsection shall be regarded as confidential
9 attorney-client communication.

10 (g) The attorney general has forty-five (45) days from the date that
11 an agency:

- 12 (1) submits a rule under section 31 of this chapter; or
13 (2) resubmits a rule under subsection (e);

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

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

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

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

- 26 (A) has been adopted without statutory authority;
27 (B) has been adopted without complying with this chapter or
28 IC 13-14-9;
29 (C) ~~is not a logical outgrowth of the proposed rule as~~
30 ~~published under IC 13-14-9-5(a)(2) and of the testimony~~
31 ~~presented at the board meeting held under IC 13-14-9-5(a)(3);~~
32 **does not meet the appropriate substantial similarity or**
33 **logical outgrowth standard under section 29(c) of this**
34 **chapter; or**
35 (D) violates another law.

36 SECTION 33. IC 4-22-2-37.1, AS AMENDED BY P.L.140-2013,
37 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
38 JULY 1, 2023]: Sec. 37.1. (a) The following do not apply to a rule
39 adopted under this section:

- 40 (1) Sections ~~24~~ **23** through ~~36~~ **27** of this chapter
41 ~~(2)~~ **or IC 13-14-9 (as applicable).**
42 **(2) Sections 28 through 36 of this chapter.**

43 **The amendments to this section made in the 2023 regular session**
44 **of the general assembly apply to provisional rules that are accepted**
45 **for filing by the publisher of the Indiana Register after June 30,**
46 **2023, regardless of whether the adopting agency initiated official**
47 **action to adopt the rule by the name of emergency rule or**
48 **provisional rule before July 1, 2023. An action taken before July 1,**
49 **2023, in conformity with this section (as effective after June 30,**
50 **2023) is validated to the same extent as if the action was taken after**
51 **June 30, 2023.**

1 (b) ~~An agency may adopt a rule may be adopted under on a~~
 2 ~~subject for which the agency has rulemaking authority using the~~
 3 ~~procedures in this section if a statute delegating authority to an agency~~
 4 ~~to adopt rules authorizes adoption of such a rule:~~

5 ~~(1) under this section; or~~

6 ~~(2) in the manner provided by this section:~~

7 **the governor finds that the agency proposing to adopt the rule has**
 8 **demonstrated to the satisfaction of the governor that use of**
 9 **provisional rulemaking procedures under this section is necessary**
 10 **to avoid:**

11 (1) **an imminent and a substantial peril to public health,**
 12 **safety, or welfare;**

13 (2) **an imminent and a material loss of federal funds for an**
 14 **agency program;**

15 (3) **an imminent and a material deficit;**

16 (4) **an imminent and a substantial violation of a state or**
 17 **federal law or the terms of a federal agreement or program;**

18 (5) **injury to the business or interests of the people or any**
 19 **public utility of Indiana as determined under IC 8-1-2-113;**

20 (6) **an imminent and a substantial peril to:**

21 (A) **wildlife; or**

22 (B) **domestic animal;**

23 **health, safety, or welfare; or**

24 (7) **the spread of invasive species, pests, or diseases affecting**
 25 **plants.**

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

41 (c) ~~After an agency adopts a rule under this section, the governor~~
 42 ~~approves provisional rulemaking procedures for a rule but before~~
 43 ~~the agency adopts the provisional rule, the agency shall submit the~~
 44 ~~rule to the publisher for the assignment of obtain a document control~~
 45 ~~number The agency shall submit the rule in the form required by~~
 46 ~~section 20 of this chapter and with the documents required by section~~
 47 ~~21 of this chapter. from the publisher. The publisher shall determine~~
 48 ~~the documents and the format of the rule and other documents to that~~
 49 ~~must be submitted under this subsection: to the publisher to obtain~~
 50 ~~a document control number. The agency must submit at least the~~
 51 ~~following:~~

- 1 **(1) The full text of the proposed provisional rule in the form**
 2 **required by section 20 of this chapter.**
 3 **(2) A statement justifying the need for provisional**
 4 **rulemaking.**
 5 **(3) The approval of the governor to use provisional**
 6 **rulemaking procedures required by law.**
 7 **(4) The documents required by section 21 of this chapter.**
 8 **An agency may not adopt a proposed provisional rule until after**
 9 **the publisher notifies the agency that the publisher has complied**
 10 **with subsection (d). At least ten (10) regular business days must**
 11 **elapse after the publisher has complied with subsection (d) before**
 12 **the department of natural resources, the natural resources**
 13 **commission, the department of environmental management, or a**
 14 **board that has rulemaking authority under IC 13 adopts a**
 15 **provisional rule.**
 16 **(d) Upon receipt of documents described in subsection (c), the**
 17 **publisher shall distribute the full text of the proposed provisional**
 18 **rule to legislators and legislative committees in the manner and the**
 19 **form specified by the legislative council or the personnel**
 20 **subcommittee of the legislative council acting for the legislative**
 21 **council. After distribution has occurred, the publisher shall notify**
 22 **the agency of the date that distribution under this subsection has**
 23 **occurred.**
 24 ~~(d)~~ **(e) After the document control number has been assigned and**
 25 **the agency adopts the provisional rule, the agency shall submit the**
 26 ~~rule~~ **following to the publisher for filing:**
 27 **(1) The text of the adopted provisional rule.** The agency shall
 28 submit the **provisional** rule in the form required by section 20 of
 29 this chapter. ~~and with~~
 30 **(2) A signature page that indicates that the agency has**
 31 **adopted the provisional rule in conformity with all procedures**
 32 **required by law.**
 33 **(3) If the provisional rule adds or amends language to**
 34 **increase or expand application of a fee, fine, or civil penalty**
 35 **or a schedule of fees, fines, or civil penalties, the agenda of the**
 36 **budget committee meeting at which the rule was scheduled for**
 37 **review.**
 38 **(4) The documents required by section 21 of this chapter.**
 39 The publisher shall determine the format of the **provisional** rule and
 40 other documents to be submitted under this subsection. **The**
 41 **substantive text of the adopted provisional rule must be**
 42 **substantially similar to the text of the proposed provisional rule**
 43 **submitted to the governor. A provisional rule may suspend but not**
 44 **repeal a rule approved by the governor under section 34 of this**
 45 **chapter.**
 46 ~~(e)~~ **(f) Subject to subsections (c) and (e) and section 39 of this**
 47 **chapter, the publisher shall:**
 48 (1) accept the **provisional** rule for filing; ~~and~~
 49 (2) electronically record the date and time that the **provisional**
 50 rule is accepted; ~~and~~
 51 **(3) publish the text of the adopted provisional rule and the**

- 1 **governor's approval in the Indiana Register.**
- 2 ~~(f)~~ **(g)** A **provisional** rule adopted by an agency under this section
- 3 takes effect on the latest of the following dates:
- 4 (1) The effective date of the statute delegating authority to the
- 5 agency to adopt the **provisional** rule.
- 6 (2) The date and time that the **provisional** rule is accepted for
- 7 filing under subsection ~~(e)~~: **(f)**.
- 8 (3) The effective date stated by the adopting agency in the
- 9 **provisional** rule.
- 10 (4) The date of compliance with every requirement established by
- 11 law as a prerequisite to the adoption or effectiveness of the
- 12 **provisional** rule.
- 13 (5) The statutory effective date for ~~an emergency~~ **a provisional**
- 14 rule set forth in the statute authorizing the agency to adopt
- 15 emergency rules: ~~law~~.
- 16 ~~(g)~~ Unless otherwise provided by the statute authorizing adoption
- 17 of the rule:
- 18 (1) a rule adopted under this section expires not later than ninety
- 19 (90) days after the rule is accepted for filing under subsection ~~(e)~~;
- 20 (2) a rule adopted under this section may be extended by adopting
- 21 another rule under this section; but only for one (1) extension
- 22 period; and
- 23 (3) for a rule adopted under this section to be effective after one
- 24 (1) extension period; the rule must be adopted under:
- 25 (A) sections 24 through 36 of this chapter; or
- 26 (B) IC 13-14-9;
- 27 as applicable.
- 28 **(h)** An agency may amend a provisional rule with another
- 29 provisional rule by following the procedures in this section for the
- 30 amended provisional rule. However, unless otherwise provided by
- 31 IC 4-22-2.3, a provisional rule and all amendments of a provisional
- 32 rule by another provisional rule expire not later than one hundred
- 33 eighty (180) days after the initial provisional rule is accepted for
- 34 filing under subsection (f). The subject of the provisional rule,
- 35 including all amendments to the provisional rule, may not be
- 36 subsequently extended under this section or section 37.2 of this
- 37 chapter. If the governor determines that the circumstance that is
- 38 the basis for using the procedures under this section ceases to exist,
- 39 the governor may terminate the provisional rule before the lapse
- 40 of one hundred eighty (180) days. The termination is effective when
- 41 filed with the publisher. The publisher shall publish the
- 42 termination notice in the Indiana Register.
- 43 ~~(h)~~ This section may not be used to readopt a rule under IC 4-22-2.5.
- 44 (i) The publisher of the Indiana administrative code shall annually
- 45 publish a list of agencies authorized to adopt rules under this section:
- 46 **(i)** Subject to subsection (j), the attorney general or the governor
- 47 may file an objection to a provisional rule that is adopted under
- 48 this section not later than forty-five (45) days after the date that a
- 49 provisional rule or amendment to a provisional rule is accepted for
- 50 filing under subsection (f). The objection must cite the document
- 51 control number for the affected provisional rule and state the basis

1 for the objection. When filed with the publisher, the objection has
 2 the effect of invalidating the provisional rule or amendment to a
 3 provisional rule. The publisher shall publish the objection in the
 4 **Indiana Register.**

5 (j) The attorney general may file a written objection to a
 6 provisional rule under subsection (i) only if the attorney general
 7 determines that the provisional rule has been adopted:

8 (1) without statutory authority; or

9 (2) without complying with this section.

10 A notice of objection to a provisional rule by the attorney general
 11 must include findings that explain the basis for the determination.
 12 The notice of objection shall be provided to the agency in an
 13 electronic format.

14 SECTION 34. IC 4-22-2-37.2 IS ADDED TO THE INDIANA
 15 CODE AS A NEW SECTION TO READ AS FOLLOWS
 16 [EFFECTIVE JULY 1, 2023]: Sec. 37.2. (a) The following do not
 17 apply to a rule adopted under this section:

18 (1) Sections 23 through 27 of this chapter or IC 13-14-9 (as
 19 applicable).

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

21 This section as added by the 2023 regular session of the general
 22 assembly applies to interim rules that are accepted for filing by the
 23 publisher of the **Indiana Register** after **June 30, 2023**, regardless of
 24 whether the adopting agency initiated official action to adopt the
 25 interim rule before **July 1, 2023**. An action taken before **July 1,**
 26 **2023**, in conformity with this section (as effective after **June 30,**
 27 **2023**) is validated to the same extent as if the action was taken after
 28 **June 30, 2023**.

29 (b) An agency may only adopt a rule on a subject for which the
 30 agency has rulemaking authority using the procedures in this
 31 section if the governor finds that the agency proposing to adopt the
 32 rule has demonstrated to the satisfaction of the governor that use
 33 of interim rulemaking procedures under this section is necessary
 34 to implement:

35 (1) a new state or federal law or program, rule of another
 36 state agency, federal regulation, or federal grant or loan
 37 agreement, or (if used by the agency to carry out the agency's
 38 responsibilities) a building, an equipment, a firefighting, a
 39 safety, or a professional code adopted by a nationally
 40 recognized organization;

41 (2) a change in a state or federal law or program, rule of
 42 another state agency, federal regulation, federal grant or loan
 43 agreement, or (if used by the agency to carry out the agency's
 44 responsibilities) a building, an equipment, a firefighting, a
 45 safety, or a professional code adopted by a nationally
 46 recognized organization; or

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

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

51 (c) To obtain a determination from the governor, an agency

1 must submit to the governor the text of the proposed interim rule,
 2 a statement justifying the need for interim rulemaking procedures,
 3 and any additional information required by the governor in the
 4 form and in the manner required by the governor. The governor
 5 may not approve interim rulemaking for any part of a proposed
 6 interim rule that adds or amends language to increase or expand
 7 application of a fee, fine, or civil penalty or a schedule of fees, fines,
 8 or civil penalties before submitting the proposal to the budget
 9 committee for review. A notice of determination by the governor
 10 shall include findings that explain the basis for the determination.
 11 The notice of determination shall be provided to the agency in an
 12 electronic format. Approval of a request shall be treated as a
 13 determination that the rule meets the criteria in this subsection.

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

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

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

20 (3) If the interim rule adds or amends language to increase or
 21 expand application of a fee, fine, or civil penalty or a schedule
 22 of fees, fines, or civil penalties, the agenda of the budget
 23 committee meeting at which the rule was scheduled for
 24 review.

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

26 The publisher shall review materials submitted under this section
 27 and determine the date that the publisher intends to include the
 28 material in the Indiana Register. After establishing the intended
 29 publication date, the publisher shall provide a written or an
 30 electronic mail authorization to proceed to the agency.

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

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

35 (2) The full text of the agency's proposed interim rule in the
 36 form required by section 20 of this chapter (excluding the text
 37 of a matter incorporated by reference under section 21 of this
 38 chapter).

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

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

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

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

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

51 (5) Information concerning where, when, and how a person

1 may inspect any documents incorporated by reference into
2 the proposed interim rule under section 21 of this chapter.

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

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

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

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

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

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

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

30 (h) After the agency adopts the interim rule, the agency shall
31 submit the following to the publisher for filing:

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

35 (2) A summary of the comments received by the agency
36 during the public comment period and the agency's response
37 to the comments.

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

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

42 The publisher shall determine the format of the interim rule and
43 other documents to be submitted under this subsection. An interim
44 rule may suspend but not repeal a rule approved by the governor
45 under section 34 of this chapter.

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

48 (1) accept the interim rule for filing;

49 (2) electronically record the date and time that the interim
50 rule is accepted; and

51 (3) publish the text of the adopted interim rule and the

- 1 governor's approval in the Indiana Register.
- 2 **(j) An interim rule adopted by an agency under this section**
- 3 **takes effect on the latest of the following dates:**
- 4 **(1) The effective date of the statute delegating authority to the**
- 5 **agency to adopt the interim rule.**
- 6 **(2) The date and time that the interim rule is accepted for**
- 7 **filing under subsection (i).**
- 8 **(3) The effective date stated by the adopting agency in the**
- 9 **interim rule.**
- 10 **(4) The date of compliance with every requirement**
- 11 **established by law as a prerequisite to the adoption or**
- 12 **effectiveness of the interim rule.**
- 13 **(5) The statutory effective date for an interim rule set forth in**
- 14 **law.**
- 15 **(k) An agency may amend an interim rule with another interim**
- 16 **rule by following the procedures in this section for adoption of an**
- 17 **interim rule. Except as provided in IC 4-22-2.3, an interim rule and**
- 18 **all subsequent rules on the same subject adopted under section 37.1**
- 19 **of this chapter or this section expire not later than four hundred**
- 20 **twenty-five (425) days after the initial interim rule is accepted for**
- 21 **filing under subsection (i).**
- 22 **(l) Subject to subsection (m), the attorney general or the**
- 23 **governor may file an objection to an interim rule that is adopted**
- 24 **under this section not later than forty-five (45) days after the date**
- 25 **that an interim rule or amendment to an interim rule is accepted**
- 26 **for filing under subsection (i). The objection must cite the**
- 27 **document control number for the affected interim rule and state**
- 28 **the basis for the objection. When filed with the publisher, the**
- 29 **objection has the effect of invalidating the interim rule or**
- 30 **amendment to an interim rule. The publisher shall publish the**
- 31 **objection in the Indiana Register.**
- 32 **(m) The attorney general may file a written objection to an**
- 33 **interim rule under subsection (l) only if the attorney general**
- 34 **determines that the interim rule has been adopted:**
- 35 **(1) without statutory authority; or**
- 36 **(2) without complying with this section.**
- 37 **A notice of objection to an interim rule by the attorney general**
- 38 **must include findings that explain the basis for the determination.**
- 39 **The notice of objection shall be provided to the agency in an**
- 40 **electronic format.**
- 41 SECTION 35. IC 4-22-2-38, AS AMENDED BY P.L.123-2006,
- 42 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 43 JULY 1, 2023]: Sec. 38. (a) This section applies to a rulemaking action
- 44 resulting in any of the following rules:
- 45 (1) A rule that brings another rule into conformity with section 20
- 46 of this chapter.
- 47 (2) A rule that amends another rule to replace an inaccurate
- 48 reference to a statute, rule, regulation, other text, governmental
- 49 entity, or location with an accurate reference, when the inaccuracy
- 50 is the result of the rearrangement of a federal or state statute, rule,
- 51 or regulation under a different citation number, a federal or state

- 1 transfer of functions from one (1) governmental entity to another,
 2 a change in the name of a federal or state governmental entity, or
 3 a change in the address of an entity.
- 4 (3) A rule correcting any other typographical, clerical, or spelling
 5 error in another rule.
- 6 (b) Sections 24 through ~~37.1~~ **37.2** of this chapter do not apply to
 7 rules described in subsection (a).
- 8 (c) Notwithstanding any other statute, an agency may adopt a rule
 9 described by subsection (a) without complying with any statutory
 10 notice, hearing, adoption, or approval requirement. In addition, the
 11 governor may adopt a rule described in subsection (a) for an agency
 12 without the agency's consent or action.
- 13 (d) A rule described in subsection (a) shall be submitted to the
 14 publisher for the assignment of a document control number. The
 15 agency (or the governor, for the agency) shall submit the rule in the
 16 form required by section 20 of this chapter and with the documents
 17 required by section 21 of this chapter. The publisher shall determine
 18 the number of copies of the rule and other documents to be submitted
 19 under this subsection.
- 20 (e) After a document control number is assigned, the agency (or the
 21 governor, for the agency) shall submit the rule to the publisher for
 22 filing. The agency (or the governor, for the agency) shall submit the
 23 rule in the form required by section 20 of this chapter and with the
 24 documents required by section 21 of this chapter. The publisher shall
 25 determine the format of the rule and other documents to be submitted
 26 under this subsection.
- 27 (f) Subject to section 39 of this chapter, the publisher shall:
 28 (1) accept the rule for filing; and
 29 (2) electronically record the date and time that it is accepted.
- 30 (g) Subject to subsection (h), a rule described in subsection (a) takes
 31 effect on the latest of the following dates:
 32 (1) The date that the rule being corrected by a rule adopted under
 33 this section becomes effective.
 34 (2) The date that is forty-five (45) days from the date and time
 35 that the rule adopted under this section is accepted for filing
 36 under subsection (f).
- 37 (h) The governor or the attorney general may file an objection to a
 38 rule that is adopted under this section before the date that is forty-five
 39 (45) days from the date and time that the rule is accepted for filing
 40 under subsection (f). When filed with the publisher, the objection has
 41 the effect of invalidating the rule.
- 42 SECTION 36. IC 4-22-2-39, AS AMENDED BY P.L.123-2006,
 43 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 44 JULY 1, 2023]: Sec. 39. (a) When an agency submits a rule for filing
 45 under section 35, 37.1, **37.2**, or 38 of this chapter, the publisher may
 46 accept the rule for filing only if the following conditions are met:
 47 (1) The following documents are submitted to allow the publisher
 48 to comply with IC 4-22-7-5:
 49 (A) One (1) electronic copy of the rule.
 50 (B) One (1) copy of any matters incorporated by reference

- 1 under section 21 of this chapter in the format specified by the
 2 publisher.
- 3 (C) One (1) copy of any supporting documentation submitted
 4 under section 31 of this chapter in the format specified by the
 5 publisher.
- 6 (2) Each submitted copy includes a reference to the document
 7 control number assigned to the rule by the publisher.
- 8 (3) Each submitted copy indicates that the agency has conducted
 9 its rulemaking action in conformity with all procedures required
 10 by law. However, if section 31 of this chapter applies to the rule,
 11 the publisher shall rely on the approval of the attorney general as
 12 the basis for determining that the agency has complied with all
 13 procedures required before the date of the approval.
- 14 (b) If a rule includes a statement that the rule is not effective until:
 15 (1) an agency has complied with requirements established by the
 16 federal or state government;
 17 (2) a specific period of time has elapsed; or
 18 (3) a date has occurred;
 19 the agency has complied with subsection (a)(3) even if the described
 20 event or time has not occurred before the publisher reviews the rule
 21 under this section.
- 22 (c) The publisher shall take no more than three (3) business days to
 23 complete the review of a rule under this section.
- 24 SECTION 37. IC 4-22-2-40, AS AMENDED BY P.L.53-2014,
 25 SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2023]: Sec. 40. (a) At any time before a rule is accepted for
 27 filing by the publisher under section 35, 37.1, **37.2**, or 38 of this
 28 chapter, the agency that adopted the rule may recall it. A rule may be
 29 recalled regardless of whether:
- 30 (1) the rule has been disapproved by the attorney general under
 31 section 32 of this chapter; or
 32 (2) the rule has been disapproved by the governor under section
 33 34 of this chapter.
- 34 (b) **IC 13-14-9 and** sections ~~24~~ **23** through 38 of this chapter do not
 35 apply to a recall action under this section. However, the agency shall
 36 distribute a notice of its recall action to the publisher for publication in
 37 the Indiana Register. **IC 13-14-9 and** sections ~~24~~ **23** and 26 of this
 38 chapter do not apply to a readoption action under subsection (c).
- 39 (c) After an agency recalls a rule, the agency may reconsider its
 40 adoption action and adopt an identical rule or a revised rule. However,
 41 if **IC 13-14-9 or** sections ~~24~~ **23** through 36 of this chapter apply to the
 42 recalled rule, the readopted rule must comply with the requirements
 43 under section 29 of this chapter **or IC 13-14-9-9 (as applicable)**.
- 44 (d) The recall of a rule under this section voids any approval given
 45 after the rule was adopted and before the rule was recalled.
- 46 (e) If a rule is:
 47 (1) subject to sections 31 and 33 of this chapter;
 48 (2) recalled under subsection (a); and
 49 (3) readopted under subsection (c);
 50 the agency shall resubmit the readopted version of the recalled rule to

1 the attorney general and the governor for approval. The attorney
 2 general and the governor have the full statutory period to approve or
 3 disapprove the readopted rule. ~~If the recalled rule was submitted to the~~
 4 ~~office of management and budget under section 28 of this chapter,~~ The
 5 agency shall resubmit the readopted version of a recalled rule to the
 6 office of management and budget with sufficient information for the
 7 office of management and budget to evaluate whether ~~its~~ **the** initial
 8 ~~fiscal impact statement regulatory analysis submitted to the office~~
 9 **of management and budget** under section ~~28~~ **22.8** of this chapter
 10 needs to be revised. ~~The office of management and budget shall revise~~
 11 ~~a fiscal impact statement under section 28 of this chapter~~ If the fiscal
 12 impact of the readopted rule is substantially different from the recalled
 13 rule, **the agency shall submit the revised regulatory analysis to the**
 14 **publisher for publication in the Indiana Register with the**
 15 **document control number assigned by the publisher to the rule.**
 16 The agency also shall comply with any other applicable approval
 17 requirement provided by statute.

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

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

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

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

32 SECTION 39. IC 4-22-2.1-1, AS AMENDED BY P.L.139-2007,
 33 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 34 JULY 1, 2023]: Sec. 1. Except for a rule that is the subject of a
 35 rulemaking action under IC 13-14-9, IC 22-12, IC 22-13, IC 22-14, or
 36 IC 22-15, this chapter applies to a rule for which the notice **of the first**
 37 **public comment period** required by IC 4-22-2-23 is published by an
 38 agency after June 30, 2005.

39 SECTION 40. IC 4-22-2.1-5, AS AMENDED BY P.L.109-2015,
 40 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2023]: Sec. 5. ~~(a)~~ If an agency intends to adopt a rule under
 42 IC 4-22-2 that will impose requirements or costs on small businesses,
 43 the agency shall prepare a statement that describes the annual
 44 economic impact of a rule on all small businesses after the rule is fully
 45 implemented. ~~as described in subsection (b).~~ The statement required by
 46 this section must include the following:

- 47 (1) An estimate of the number of small businesses, classified by
 48 industry sector, that will be subject to the proposed rule.
- 49 (2) An estimate of the average annual reporting, record keeping,
 50 and other administrative costs that small businesses will incur to

- 1 comply with the proposed rule.
- 2 (3) An estimate of the total annual economic impact that
 3 compliance with the proposed rule will have on all small
 4 businesses subject to the rule. ~~The agency is not required to~~
 5 ~~submit the proposed rule to the office of management and budget~~
 6 ~~for a fiscal analysis under IC 4-22-2-28 unless the estimated~~
 7 ~~economic impact of the rule is greater than five hundred thousand~~
 8 ~~dollars (\$500,000) on all regulated entities, as set forth in~~
 9 ~~IC 4-22-2-28.~~
- 10 (4) A statement justifying any requirement or cost that is:
- 11 (A) imposed on small businesses by the rule; and
- 12 (B) not expressly required by:
- 13 (i) the statute authorizing the agency to adopt the rule; or
- 14 (ii) any other state or federal law.
- 15 The statement required by this subdivision must include a
 16 reference to any data, studies, or analyses relied upon by the
 17 agency in determining that the imposition of the requirement or
 18 cost is necessary.
- 19 (5) A regulatory flexibility analysis that considers any less
 20 intrusive or less costly alternative methods of achieving the
 21 purpose of the proposed rule. The analysis under this subdivision
 22 must consider the following methods of minimizing the economic
 23 impact of the proposed rule on small businesses:
- 24 (A) The establishment of less stringent compliance or
 25 reporting requirements for small businesses.
- 26 (B) The establishment of less stringent schedules or deadlines
 27 for compliance or reporting requirements for small businesses.
- 28 (C) The consolidation or simplification of compliance or
 29 reporting requirements for small businesses.
- 30 (D) The establishment of performance standards for small
 31 businesses instead of design or operational standards imposed
 32 on other regulated entities by the rule.
- 33 (E) The exemption of small businesses from part or all of the
 34 requirements or costs imposed by the rule.
- 35 If the agency has made a preliminary determination not to
 36 implement one (1) or more of the alternative methods considered,
 37 the agency shall include a statement explaining the agency's
 38 reasons for the determination, including a reference to any data,
 39 studies, or analyses relied upon by the agency in making the
 40 determination.
- 41 ~~(b) For purposes of subsection (a), a proposed rule will be fully~~
 42 ~~implemented with respect to small businesses after:~~
- 43 ~~(1) the conclusion of any phase-in period during which:~~
- 44 ~~(A) the rule is gradually made to apply to small businesses or~~
 45 ~~certain types of small businesses; or~~
- 46 ~~(B) the costs of the rule are gradually implemented; and~~
- 47 ~~(2) the rule applies to all small businesses that will be affected by~~
 48 ~~the rule.~~
- 49 In determining the total annual economic impact of the rule under
 50 subsection (a)(3), the agency shall consider the annual economic

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

7 (c) The agency shall:

8 (1) publish the statement required under subsection (a) in the
 9 Indiana Register as required by IC 4-22-2-24; and

10 (2) deliver a copy of the statement, along with the proposed rule,
 11 to the small business ombudsman not later than the date of
 12 publication under subdivision (1).

13 SECTION 41. IC 4-22-2.1-6, AS AMENDED BY P.L.134-2021,
 14 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2023]: Sec. 6. (a) Not later than seven (7) days before the date
 16 of the public hearing set forth in the agency's notice under
 17 IC 4-22-2-24, the small business ombudsman shall do the following:

18 (1) Review the proposed rule and economic impact statement
 19 submitted to the small business ombudsman by the agency under
 20 section 5(c) 5 of this chapter.

21 (2) Submit written comments to the agency on the proposed rule
 22 and the economic impact statement prepared by the agency under
 23 section 5 of this chapter. The small business ombudsman's
 24 comments may:

25 (A) recommend that the agency implement one (1) or more of
 26 the regulatory alternatives considered by the agency under
 27 section 5(a)(5) 5 of this chapter;

28 (B) suggest regulatory alternatives not considered by the
 29 agency under section 5(a)(5) 5 of this chapter;

30 (C) recommend any other changes to the proposed rule that
 31 would minimize the economic impact of the proposed rule on
 32 small businesses; or

33 (D) recommend that the agency abandon or delay the
 34 rulemaking action until:

35 (i) more data on the impact of the proposed rule on small
 36 businesses can be gathered and evaluated; or

37 (ii) less intrusive or less costly alternative methods of
 38 achieving the purpose of the proposed rule can be effectively
 39 implemented with respect to small businesses.

40 (b) Upon receipt of the small business ombudsman's written
 41 comments under subsection (a), the agency shall make the comments
 42 available:

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

45 (2) electronically through the electronic gateway administered
 46 under IC 4-13.1-2-2(a)(6) by the office of technology; and

47 (3) for distribution at the public hearing required by IC 4-22-2-26.

48 (c) Before finally adopting a rule under IC 4-22-2-29, and in the
 49 same manner that the agency considers public comments under
 50 IC 4-22-2-27, the agency must fully consider the comments submitted

1 by the small business ombudsman under subsection (a). After
2 considering the comments under this subsection, the agency may:

- 3 (1) adopt any version of the rule permitted under IC 4-22-2-29; or
- 4 (2) abandon or delay the rulemaking action as recommended by
5 the small business ombudsman under subsection (a)(2)(D), if
6 applicable.

7 SECTION 42. IC 4-22-2.1-7, AS ADDED BY P.L.188-2005,
8 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2023]: Sec. 7. Before an agency may act under ~~IC 4-22-2.5~~
10 **IC 4-22-2.6** to readopt a rule to which the chapter applies, the agency
11 must conduct the review required under ~~IC 4-22-2.5-3.1.~~
12 **IC 4-22-2.6-4.**

13 SECTION 43. IC 4-22-2.3 IS ADDED TO THE INDIANA CODE
14 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2023]:

16 **Chapter 2.3. Transitional Provisions; Exceptions to Rulemaking**
17 **Procedures**

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

- 27 (1) October 1, 2023; or
- 28 (2) if the rule is included on a list described in subsection (d),
29 October 1, 2024;

30 as applicable. An emergency rule that expires under this subsection
31 may not be renewed under IC 4-22-2-37.1 (as effective after June
32 30, 2023). If the rule meets the criteria in IC 4-22-2-37.2 for
33 adoption as an interim rule, the rule may be adopted under
34 IC 4-22-2-37.2.

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

- 38 (1) incorporated into a provision of the Indiana
39 Administrative Code that before July 1, 2023, was amended
40 under the procedures in IC 4-22-2-23 through IC 4-22-2-36 or
41 IC 13-14-9 (as applicable); or
- 42 (2) readopted as part of a provision of the Indiana
43 Administrative Code that was readopted under IC 4-22-2.5
44 (before its repeal) or IC 13-14-9.5 (before its repeal);

45 continues in effect to the extent that the text remains part of the
46 provision of the Indiana Administrative Code into which the
47 emergency rule text was incorporated.

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

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

6 Sec. 2. Before a provisional rule adopted under IC 4-22-2-37.1
7 (as effective after June 30, 2023) expires, the governor by executive
8 order may authorize the extension of the provisional rule under the
9 interim procedures in IC 4-22-2-37.2 if the governor determines
10 and finds in the executive order that the provisional circumstances
11 justifying the provisional rule continue to exist. A rule adopted
12 under the authority of an extension under this section expires not
13 later than one (1) year after the date on which the rule is published
14 in the Indiana Register.

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

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

30 Sec. 5. The department of natural resources (or to the extent
31 permitted by IC 14-10-2, the natural resources commission) may
32 adopt interim rules under the interim rule procedures in
33 IC 4-22-2-37.2 to carry out the duties of the department of natural
34 resources under a law listed in IC 14-10-2-5. A rule described in
35 this section may be continued in another interim rule only if the
36 governor determines under IC 4-22-2-37.2(c) that the policy
37 options available to the agency are so limited that use of the
38 additional notice, comment, and review procedures in IC 4-22-2-23
39 through IC 4-22-2-36 would provide no benefit to persons
40 regulated or otherwise affected by the rule. A rule adopted
41 concerning the department of natural resources' discharge of
42 duties under a law listed in IC 14-10-2-5(a)(22) expires upon the
43 earlier of the following:

44 (1) One (1) year after the rule is accepted by the publisher of
45 the Indiana Register.

46 (2) Upon the adoption of a rule under this chapter concerning
47 the department of natural resources' discharge of duties
48 imposed under this article.

49 Sec. 6. The following apply to the department of financial
50 institutions:

51 (1) The department of financial institutions shall adopt rules

1 under the interim rule procedures in IC 4-22-2-37.2
2 announcing:

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

7 (B) promptly after the changes occur, changes in the Index
8 required by IC 24-4.5-1-106(3), including, when applicable,
9 the numerical equivalent of the Reference Base Index
10 under a revised Reference Base Index and the designation
11 or title of any index superseding the Index;

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

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

16 A rule described in this subdivision expires not later than
17 January of the next odd-numbered year after the department
18 of financial institutions is required to issue the rule.

19 (2) The department of financial institutions may adopt a rule
20 under the interim rule procedures in IC 4-22-2-37.2 for a rule
21 permitted under IC 24-4.4-1-101 (licensing system for
22 creditors and mortgage loan originators) or IC 24-4.5
23 (Uniform Consumer Credit Code) if the department of
24 financial institutions declares an emergency. A rule described
25 in this subdivision expires not later than two (2) years after
26 the rule is effective.

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

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

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

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

50 (1) has been scheduled or emergency scheduled by the United
51 States Drug Enforcement Administration;

1 (2) has been scheduled, emergency scheduled, or criminalized
 2 by another state; or

3 (3) has:

4 (A) a high potential for abuse; and

5 (B) no accepted medical use in treatment in the United
 6 States or lacks accepted safety for use in treatment under
 7 medical supervision.

8 In making a determination, the Indiana board of pharmacy shall
 9 consider the factors described in IC 25-26-13-4.1. Notwithstanding
 10 IC 4-22-2-37.2(i), a rule described in this section becomes effective
 11 when the rule is published in the Indiana Register. A rule described
 12 in this section expires not later than one (1) year after the rule is
 13 accepted for filing by the publisher of the Indiana Register and
 14 may not be continued in another interim rule.

15 Sec. 9. (a) The Indiana pesticide review board may adopt
 16 interim rules under IC 4-22-2-37.2 to classify a pesticide as a
 17 restricted use pesticide, if the Indiana pesticide review board finds
 18 that adoption of the interim rule is necessary to prevent an undue
 19 and immediate hazard to persons, animals, wildlife, lands, or
 20 water, other than the pests that the pesticide is intended to prevent,
 21 destroy, control, or mitigate.

22 (b) The Indiana pesticide review board may adopt interim rules
 23 under IC 4-22-2-37.2 to impose a restriction or requirement on the
 24 storage, distribution, use, application, or record keeping for a
 25 restricted use pesticide that is more stringent than the restriction
 26 or requirement imposed under federal law if the Indiana pesticide
 27 review board finds that weather, soil, or other conditions in
 28 Indiana impact the effectiveness or safety of the storage,
 29 distribution, use, application, or record keeping of the restricted
 30 use pesticide in a manner that differs from federal law generally.

31 (c) The Indiana pesticide review board may adopt interim rules
 32 under IC 4-22-2-37.2 to impose a restriction or requirement on the
 33 storage, distribution, use, application, or record keeping for a
 34 restricted use or general use pesticide that is more stringent than
 35 the restriction or requirement imposed under federal law if the
 36 Indiana pesticide review board receives a written request from the
 37 registrant of the applicable pesticide.

38 (d) Unless specifically authorized by Indiana law under
 39 IC 15-16-5-72, an interim rule authorized under this section
 40 expires on adjournment sine die of the regular session of the
 41 general assembly that begins after the rule is accepted for filing by
 42 the publisher of the Indiana Register and may not be continued in
 43 another interim rule.

44 SECTION 44. IC 4-22-2.5 IS REPEALED [EFFECTIVE JULY 1,
 45 2023]. (Expiration and Readoption of Administrative Rules).

46 SECTION 45. IC 4-22-2.6 IS ADDED TO THE INDIANA CODE
 47 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 48 JULY 1, 2023]:

49 **Chapter 2.6. Expiration and Readoption of Administrative**
 50 **Rules**

51 **Sec. 1. (a) Except as provided in this section and section 10 of**

1 this chapter, a rule expires January 1 of the fifth year after the
 2 year in which the rule takes effect, unless the rule expires or is
 3 repealed on an earlier date. Except for an amendment made under
 4 IC 4-22-2-38, the expiration date of a rule under this section is
 5 extended each time that a rule amending or readopting an
 6 unexpired rule takes effect. The rule, as amended or readopted,
 7 expires on January 1 of the fifth year after the year in which the
 8 amendment or re Adoption takes effect.

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

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

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

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

16 (4) in calendar year 2020, the rule expires not later than
 17 January 1, 2027.

18 (c) If the latest version of a rule became effective before January
 19 1, 2017, and:

20 (1) the rule was adopted by an agency established under
 21 IC 13, the rule expires not later than January 1, 2025;

22 (2) the rule was adopted by an agency established under
 23 IC 16, the rule expires not later than January 1, 2026; or

24 (3) the rule was adopted by an agency not described in
 25 subdivision (1) or (2), the rule expires not later than January
 26 1, 2027.

27 (d) A re Adoption rulemaking action under IC 4-22-2.5 (before
 28 its repeal) or IC 13-14-9.5 (before its repeal) that became effective
 29 before July 1, 2023, is validated to the same extent as if the
 30 rulemaking action had been conducted under the procedures in
 31 this chapter.

32 (e) The determination of whether an administrative rule expires
 33 under this chapter shall be applied at the level of an Indiana
 34 Administrative Code section.

35 **Sec. 2.** An agency that has rulemaking authority may readopt a
 36 rule in anticipation of a rule's expiration under section 1 of this
 37 chapter. To readopt a rule, an agency may readopt the rule either:

38 (1) without changes in conformity with the procedures in
 39 sections 3 through 9 of this chapter; or

40 (2) with or without changes in conformity with the procedures
 41 in IC 4-22-2-23 through IC 4-22-2-36 (as modified by
 42 IC 13-14-9, when applicable).

43 **Sec. 3.** (a) Except as provided in subsection (b), if an agency
 44 intends to readopt a rule, the agency shall, not later than January
 45 1 of the fourth year after the year in which the rule takes effect,
 46 provide an initial notice of the intended re Adoption in an electronic
 47 format designated by the publisher to legislators and legislative
 48 committees in the manner and on the schedule specified by the
 49 legislative council or the personnel subcommittee of the legislative
 50 council acting for the legislative council.

51 (b) An agency is not required to provide the initial notice under

1 subsection (a) for a rule described in section 1(b)(1) of this chapter.

2 Sec. 4. (a) To readopt a rule, an agency must conduct a review
3 of the rule to consider the continued need for the rule and whether
4 the rule, if readopted, will meet each of the standards in
5 IC 4-22-2-19.5 and (if applicable) the requirements for fees, fines,
6 and civil penalties in IC 4-22-2-19.6.

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

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

22 (2) The complexity of the rule, including any difficulties
23 encountered by:

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

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

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

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

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

39 (b) The notice must include the following:

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

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

44 (3) A written public comment period of thirty (30) days and
45 instructions on how to submit written comments to the
46 agency.

47 (4) A request for comments on whether specific rules should
48 be reviewed through the regular rulemaking process under
49 IC 4-22-2-23 through IC 4-22-2-36 (as modified by IC 13-14-9,
50 when applicable).

51 (5) A summary of the agency's findings under section 4 of this

1 chapter.

2 (6) Any other information required by the publisher.

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

10 (1) establishing the intended publication date; and

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

12 the publisher shall assign a document control number, provide an
13 electronic mail authorization to proceed to the agency, and publish
14 the material on the intended publication date.

15 Sec. 6. (a) The agency shall prepare responses to all comments
16 received during the public comment period.

17 (b) The agency, after considering the written comments and
18 responses, may do the following:

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

31 (2) Readopt one (1) or more rules within the scope of the
32 notice of proposed readoption without change.

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

38 Sec. 7. (a) The agency shall immediately submit the rulemaking
39 document containing the readopted rules to the publisher for filing
40 along with documentation demonstrating that the agency has
41 readopted the rules. The agency shall submit material in the form
42 required by IC 4-22-2-20. The rulemaking document must make
43 reference to the document control number assigned by the
44 publisher.

45 (b) If the rulemaking document complies with this section, the
46 publisher shall:

47 (1) accept the rule for filing; and

48 (2) electronically record the date and time the rule is
49 accepted.

50 Sec. 8. A readopted rule that has been accepted for filing under
51 section 7 of this chapter takes effect on the latest of the following

1 **dates:**

2 **(1) The date that is thirty (30) days from the date and time**
 3 **that the rule was accepted for filing under section 7 of this**
 4 **chapter.**

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

6 **(3) The date of compliance with every requirement**
 7 **established by law as a prerequisite to the readoption or**
 8 **effectiveness of the rule.**

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

13 **Sec. 10. If a rule is not readopted and the governor finds that the**
 14 **failure to readopt the rule causes an emergency to exist, the**
 15 **governor may, by executive order issued before the rule's**
 16 **expiration date, postpone the expiration date of the rule until a**
 17 **date that is not later than one (1) year after the date specified in**
 18 **section 1 of this chapter.**

19 **Sec. 11. The publisher shall remove all rules that have expired**
 20 **under this chapter from the Indiana Administrative Code.**
 21 **However, a rule that has expired but is readopted under this**
 22 **chapter (or IC 4-22-2.5 (before its repeal) or IC 13-14-9.5 (before**
 23 **its repeal)) may not be removed from the Indiana Administrative**
 24 **Code.**

25 SECTION 46. IC 5-28-17-6, AS AMENDED BY P.L.197-2021,
 26 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2023]: Sec. 6. The corporation shall act as the small business
 28 ombudsman. The small business ombudsman shall carry out the
 29 following duties:

30 (1) Work with state agencies to permit increased enforcement
 31 flexibility and the ability to grant common sense exemptions for
 32 first time offenders of state rules and policies, including,
 33 notwithstanding any other law, policies for the compromise of
 34 interest and penalties related to a listed tax (as defined in
 35 IC 6-8.1-1-1) and other taxes and fees collected or administered
 36 by a state agency.

37 (2) Work with state agencies to seek ways to consolidate forms
 38 and eliminate the duplication of paperwork, harmonize data, and
 39 coordinate due dates.

40 (3) Coordinate with OMB (as defined in IC 4-3-22-3) to perform
 41 cost benefit analyses.

42 (4) Work with state agencies to monitor any outdated, ineffective,
 43 or overly burdensome information requests from state agencies to
 44 small businesses.

45 (5) Carry out the duties specified under IC 4-22-2-28 and
 46 IC 4-22-2.1 to review proposed rules and participate in
 47 rulemaking actions that affect small businesses.

48 (6) Coordinate with the ombudsman designated under
 49 IC 13-28-3-2 and the office of voluntary compliance established
 50 by IC 13-28-1-1 to coordinate the provision of services required
 51 under IC 4-22-2-28.1 and IC 13-28-3.

1 (7) Prepare written and electronic information for periodic
 2 distribution to small businesses describing the small business
 3 services provided by coordinators (as defined in
 4 ~~IC 4-22-2-28.1(b))~~ **IC 4-22-2-28.1(a)**) and work with the office
 5 of technology established by IC 4-13.1-2-1 to place information
 6 concerning the availability of these services on state ~~Internet web~~
 7 **sites websites** that the small business ombudsman or a state
 8 agency determines are most likely to be visited by small business
 9 owners and managers.

10 (8) Assist in training agency coordinators who will be assigned to
 11 rules under ~~IC 4-22-2-28.1(c)~~. **IC 4-22-2-28.1(b)**.

12 (9) Investigate and attempt to resolve any matter regarding
 13 compliance by a small business with a law, rule, or policy
 14 administered by a state agency, either as a party to a proceeding
 15 or as a mediator.

16 State agencies shall cooperate with the small business ombudsman to
 17 carry out the purpose of this section. The department of state revenue
 18 and the department of workforce development shall establish a program
 19 to distribute the information described in subdivision (7) to small
 20 businesses that are required to file returns or information with these
 21 state agencies.

22 SECTION 47. IC 12-10.5-1-9, AS AMENDED BY P.L.123-2006,
 23 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2023]: Sec. 9. (a) Before finally adopting a rule under
 25 IC 4-22-2 to implement this chapter, the division shall consult with and
 26 fully consider any comments submitted by:

- 27 (1) caretakers providing care for a special needs individual under
 28 this chapter;
 29 (2) individuals with special needs receiving care from a caretaker
 30 under this chapter;
 31 (3) area agencies on aging;
 32 (4) consumers and providers of home and community based
 33 services under IC 12-10-10 and IC 12-10-11.5; and
 34 (5) any other agency, volunteer group, faith based group, or
 35 individual that the division considers appropriate;

36 to ensure that the rule complies with the requirements set forth in
 37 subsection (b).

38 (b) Rules adopted under this chapter must:

- 39 (1) include protections for the rights, safety, and welfare of
 40 individuals with special needs receiving care from a caretaker
 41 under this chapter, including reasonable monitoring and reporting
 42 requirements;

43 (2) serve distinct populations, including:

- 44 (A) the aged;
 45 (B) persons with developmental disabilities; and
 46 (C) persons with physical disabilities;

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

49 (3) not create barriers to the availability of home and community
 50 based services under IC 12-10-10 and IC 12-10-11.5 by imposing

1 costly or unduly burdensome requirements on caretakers or other
2 service providers, including:

- 3 (A) requirements for proof of financial responsibility; and
4 (B) monitoring, enforcement, reporting, or other
5 administrative requirements; and
6 (4) otherwise comply with IC 12-10-10, IC 12-10-11.5, and this
7 chapter.

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

15 SECTION 48. IC 12-10.5-2-3, AS AMENDED BY P.L.123-2006,
16 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2023]: Sec. 3. (a) Before finally adopting a rule under
18 IC 4-22-2 to implement this chapter, the division shall consult with and
19 fully consider any comments submitted by:

- 20 (1) continuum of care providers providing care under this chapter;
21 (2) individuals receiving care under this chapter;
22 (3) area agencies on aging;
23 (4) consumers and providers of home and community based
24 services under IC 12-10-10 and IC 12-10-11.5; and
25 (5) any other agency, volunteer group, faith based group, or
26 individual that the division considers appropriate;

27 to ensure that the rule complies with the requirements set forth in
28 subsection (b).

29 (b) Rules adopted under this chapter must:

- 30 (1) include protections for the rights, safety, and welfare of
31 individuals receiving care under this chapter;
32 (2) serve distinct populations, including:
33 (A) the aged;
34 (B) persons with developmental disabilities; and
35 (C) persons with physical disabilities;

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

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

- 42 (A) requirements for proof of financial responsibility; and
43 (B) monitoring, enforcement, reporting, or other
44 administrative requirements; and
45 (4) otherwise comply with IC 12-10-10, IC 12-10-11.5, and this
46 chapter.

47 (c) Before submitting a rule adopted under this chapter to the
48 attorney general for final approval under IC 4-22-2-31, the division
49 shall submit to the publisher (as defined in IC 4-22-2-3(f)) for
50 publication in the Indiana Register the division's written response ~~under~~

1 ~~IC 4-22-2-23~~ to any comments received from the parties described in
 2 subsection (a). Submissions to the publisher shall be made in the
 3 electronic format specified by the publisher.

4 SECTION 49. IC 13-14-9-0.2 IS ADDED TO THE INDIANA
 5 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 6 [EFFECTIVE JULY 1, 2023]: **Sec. 0.2. This chapter (as effective**
 7 **January 1, 2023) continues to apply after June 30, 2023, to a**
 8 **rulemaking action that is commenced under this chapter before**
 9 **July 1, 2023.**

10 SECTION 50. IC 13-14-9-1, AS AMENDED BY P.L.133-2012,
 11 SECTION 89, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2023]: Sec. 1. (a) Except as provided in ~~sections 8 and section~~
 13 ~~14~~ of this chapter, this chapter applies to the following:

14 (1) The board.

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

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

19 SECTION 51. IC 13-14-9-2 IS REPEALED [EFFECTIVE JULY 1,
 20 2023]. ~~Sec. 2: Except as provided in sections 4.5; 7; 8; and 14 of this~~
 21 ~~chapter, a board may not adopt a rule under this chapter until the board~~
 22 ~~has conducted at least two (2) public comment periods, each of which~~
 23 ~~must be at least thirty (30) days in length.~~

24 SECTION 52. IC 13-14-9-3, AS AMENDED BY P.L.100-2006,
 25 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2023]: Sec. 3. ~~(a) Except as provided in subsection (b);~~
 27 **Before publication of the notice described in IC 4-22-2-23,** the
 28 department ~~shall~~ **may** provide notice in the Indiana Register of ~~the first~~
 29 ~~a public comment period required by section 2 of this chapter;~~
 30 **regarding potential rulemaking.** A notice provided under this section
 31 must do the following:

32 (1) Identify the authority under which the proposed rule is to be
 33 adopted.

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

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

38 (B) state whether each alternative listed under clause (A)
 39 creates:

40 (i) a restriction or requirement more stringent than a
 41 restriction or requirement imposed under federal law; or

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

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

46 (D) include any information known to the department about
 47 the potential fiscal impact of each alternative under clause (A)
 48 that creates:

49 (i) a restriction or requirement more stringent than a
 50 restriction or requirement imposed under federal law; or

- 1 (ii) a restriction or requirement in a subject area in which
 2 federal law does not impose restrictions or requirements;
 3 and
 4 (E) set forth the basis for each alternative listed under clause
 5 (A).
- 6 (3) Describe the relevant statutory or regulatory requirements or
 7 restrictions relating to the subject matter of the proposed rule that
 8 exist before the adoption of the proposed rule.
- 9 (4) Request the submission of alternative ways to achieve the
 10 purpose of the proposed rule.
- 11 (5) Request the submission of comments, including suggestions
 12 of specific language for the proposed rule.
- 13 (6) Include a detailed statement of the issue to be addressed by
 14 adoption of the proposed rule.
- 15 ~~(b) This section does not apply to rules adopted under~~
 16 ~~IC 13-18-22-2, IC 13-18-22-3, or IC 13-18-22-4.~~
- 17 ~~(c) The notice required under subsection (a) shall be published~~
 18 ~~electronically in the Indiana Register under procedures established by~~
 19 ~~the publisher.~~
- 20 SECTION 53. IC 13-14-9-4, AS AMENDED BY P.L.218-2016,
 21 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 JULY 1, 2023]: Sec. 4. (a) ~~The department shall provide notice in the~~
 23 ~~Indiana Register of the second public comment period required by~~
 24 ~~section 2 of this chapter. A notice provided under this section **In**~~
 25 ~~**addition to the requirements of IC 4-22-2-23 and (if applicable)**~~
 26 ~~**IC 4-22-2-24, the notice of public comment submitted by the**~~
 27 ~~**department to the publisher** must do the following:~~
- 28 ~~(1) Contain the full text of the proposed rule, to the extent~~
 29 ~~required under IC 4-22-2-24(c).~~
- 30 ~~(2) (1) Contain a summary of the response of the department to~~
 31 ~~written comments submitted under section 3 of this chapter,~~
 32 ~~during the first public comment period. **if applicable.**~~
- 33 ~~(3) (2) Request the submission of comments, including~~
 34 ~~suggestions of specific amendments to the language contained in~~
 35 ~~the proposed rule.~~
- 36 ~~(4) Contain the full text of the commissioner's written findings~~
 37 ~~under section 7 of this chapter, if applicable.~~
- 38 ~~(5) (3) Identify each element of the proposed rule that imposes a~~
 39 ~~restriction or requirement on persons to whom the proposed rule~~
 40 ~~applies that:~~
- 41 (A) is more stringent than a restriction or requirement imposed
 42 under federal law; or
- 43 (B) applies in a subject area in which federal law does not
 44 impose a restriction or requirement.
- 45 ~~(6) (4) With respect to each element identified under subdivision~~
 46 ~~(5), (3), identify:~~
- 47 (A) the environmental circumstance or hazard that dictates the
 48 imposition of the proposed restriction or requirement to
 49 protect human health and the environment;
- 50 (B) examples in which federal law is inadequate to provide the

- 1 protection referred to in clause (A); and
 2 (C) the:
 3 (i) estimated fiscal impact; and
 4 (ii) expected benefits;
 5 based on the extent to which the proposed rule is more
 6 stringent than the restrictions or requirements of federal law,
 7 or on the creation of restrictions or requirements in a subject
 8 area in which federal law does not impose restrictions or
 9 requirements.
- 10 ~~(7)~~ **(5)** For any element of the proposed rule that imposes a
 11 restriction or requirement that is more stringent than a restriction
 12 or requirement imposed under federal law or that applies in a
 13 subject area in which federal law does not impose restrictions or
 14 requirements, describe the availability for public inspection of all
 15 materials relied upon by the department in the development of the
 16 proposed rule, including, if applicable:
 17 (A) health criteria;
 18 (B) analytical methods;
 19 (C) treatment technology;
 20 (D) economic impact data;
 21 (E) environmental assessment data;
 22 (F) analyses of methods to effectively implement the proposed
 23 rule; and
 24 (G) other background data.
- 25 ~~(b)~~ **The notice required under subsection (a):**
 26 ~~(1) shall be published electronically in the Indiana Register under~~
 27 ~~procedures established by the publisher; and~~
 28 ~~(2) if any element of the proposed rule to which the notice relates~~
 29 ~~imposes a restriction or requirement that is more stringent than a~~
 30 ~~restriction or requirement imposed under federal law; shall be~~
 31 ~~submitted in an electronic format under IC 5-14-6 to the executive~~
 32 ~~director of the legislative services agency; who shall present the~~
 33 ~~notice to the legislative council established by IC 2-5-1.1-1.~~
- 34 ~~(c)~~ **(b)** If the notice provided by the department concerning a
 35 proposed rule identifies ~~under subsection (a)(5)~~, an element of the
 36 proposed rule that imposes a restriction or requirement more stringent
 37 than a restriction or requirement imposed under federal law, the
 38 proposed rule shall not become effective under this chapter until the
 39 adjournment sine die of the regular session of the general assembly that
 40 begins after the department provides the notice.
- 41 ~~(d)~~ **(c)** ~~Subsections (b)(2) and (c) do~~ **Subsection (b) does** not
 42 prohibit or restrict the commissioner, the department, or the board
 43 from:
 44 (1) adopting **emergency provisional** rules under IC 4-22-2-37.1;
 45 (2) taking emergency action under IC 13-14-10; or
 46 (3) temporarily:
 47 (A) altering ordinary operating policies or procedures; or
 48 (B) implementing new policies or procedures;
 49 in response to an emergency situation.
- 50 SECTION 54. IC 13-14-9-4.2, AS AMENDED BY P.L.123-2006,

1 SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2023]: Sec. 4.2. Not less than fourteen (14) days before the
3 date of preliminary adoption of a proposed rule by a board, the
4 department shall make available to the board the ~~fi~~**scat impact**
5 **statement latest version of the regulatory analysis** prepared by the
6 office of management and budget with respect to ~~for~~ the proposed rule.
7 under IC 4-22-2-28(e).

8 SECTION 55. IC 13-14-9-4.5 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4.5. (a) Except for a
10 rule

11 ~~(1)~~ that has been preliminarily adopted by a board in a form that
12 is:

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

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

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

17 ~~(2) for which the commissioner has made a determination and~~
18 ~~prepared written findings under section 7 or 8 of this chapter;~~
19 **IC 4-22-2-23 or (if applicable) IC 4-22-2-24,**

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

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

25 ~~(1) text;~~

26 ~~(2) summary; and~~

27 ~~(3) fiscal analysis;~~

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

30 ~~(c) The notice of a third public comment period that must be~~
31 ~~published in the Indiana Register under subsection (b) must request the~~
32 ~~submission of comments, including suggestions of specific~~
33 ~~amendments; that concern only the portion of the preliminarily adopted~~
34 ~~rule that is substantively different from the language contained in the~~
35 ~~proposed rule published in a second notice under section 4 of this~~
36 ~~chapter.~~

37 SECTION 56. IC 13-14-9-5, AS AMENDED BY P.L.123-2006,
38 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
39 JULY 1, 2023]: Sec. 5. (a) A board may not adopt a rule until all of the
40 following occur:

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

42 (2) The department, after approval of the proposed rule by the
43 board under subsection (c), publishes the ~~following~~ **information**
44 in the Indiana Register as ~~provided in IC 4-22-2-24(e):~~

45 ~~(A) The full text of the proposed rule, including any~~
46 ~~amendments arising from the comments received before or~~
47 ~~during the meeting held under subdivision (1):~~

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

50 ~~(C) For a proposed rule with an estimated economic impact on~~

1 regulated entities that is greater than five hundred thousand
 2 dollars (\$500,000); a copy of the office of management and
 3 budget fiscal analysis required under IC 4-22-2-28. **required**
 4 **by section 4 of this chapter. However, a notice of an**
 5 **additional public comment period under section 4.5 of this**
 6 **chapter must request the submission of comments,**
 7 **including suggestions of specific amendments, that concern**
 8 **only the portion of the preliminarily adopted rule that is**
 9 **substantively different from the language contained in the**
 10 **proposed rule published in the immediately preceding**
 11 **notice under section 4 or (if applicable) 4.5 of this chapter.**

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

14 (4) If ~~a third~~ **an additional** public comment period is required
 15 under section 4.5 of this chapter, the department publishes notice
 16 of the ~~third~~ **additional** public comment period in the Indiana
 17 Register.

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

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

23 (1) proceed to publication under subsection (a)(2);

24 (2) be subject to additional comments under section ~~3 or 4~~ **4.5** of
 25 this chapter; ~~considering any written finding made by the~~
 26 ~~commissioner under section 7 or 8 of this chapter;~~ or

27 (3) be reconsidered at a subsequent board meeting in accordance
 28 with IC 4-22-2-26(d).

29 SECTION 57. IC 13-14-9-6, AS AMENDED BY P.L.123-2006,
 30 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2023]: Sec. 6. ~~In addition to the requirements of section 8 of~~
 32 ~~this chapter,~~ The department shall include the following in the written
 33 materials to be considered at the board meetings held under section
 34 5(a)(1) and 5(a)(3) of this chapter:

35 (1) The full text of the proposed rule, as most recently prepared
 36 by the department.

37 (2) The written responses of the department to all comments
 38 received:

39 (A) during the immediately preceding **public** comment period
 40 for a board meeting held under section 5(a)(1) of this chapter;

41 (B) during the immediately preceding board meeting under
 42 section 5(a)(1) of this chapter for a board meeting held under
 43 section 5(a)(3) of this chapter if ~~a third~~ **an additional** public
 44 comment period is not required under section 4.5 of this
 45 chapter; or

46 (C) during:

47 (i) ~~a third~~ **an additional** public comment period that address
 48 the portion of the preliminarily adopted rule that is
 49 substantively different from the language contained in the
 50 proposed rule published in a ~~second~~ notice under section 4

- 1 of this chapter; and
 2 (ii) the immediately preceding board meeting held under
 3 section 5(a)(1) of this chapter;
 4 for a board meeting held under section 5(a)(3) of this chapter
 5 if a ~~third~~ **an additional** public comment period is required
 6 under section 4.5 of this chapter.
- 7 (3) The full text of the ~~office of management and budget fiscal~~
 8 **latest version of the regulatory** analysis if a fiscal analysis is
 9 ~~required under IC 4-22-2-28.~~ **provided to the budget agency and**
 10 **the office of management and budget under IC 4-22-2-22.8.**
- 11 SECTION 58. IC 13-14-9-7 IS REPEALED [EFFECTIVE JULY 1,
 12 2023]. Sec. 7: (a) Unless a board determines under section 5(c)(2) of
 13 this chapter that a proposed rule should be subject to additional
 14 comments, section 3 of this chapter does not apply to a rulemaking
 15 action if the commissioner determines that the rulemaking policy
 16 alternatives available to the department are so limited that the public
 17 notice and comment period under section 3 of this chapter would
 18 provide no substantial benefit to:
 19 (1) the environment; or
 20 (2) persons to be regulated or otherwise affected by the proposed
 21 rule.
- 22 (b) If the commissioner makes a determination under subsection (a),
 23 the commissioner shall prepare written findings under this section. The
 24 full text of the commissioner's written findings shall be included in the
 25 public notice provided under section 4 of this chapter.
- 26 SECTION 59. IC 13-14-9-8, AS AMENDED BY P.L.6-2012,
 27 SECTION 103, IS AMENDED TO READ AS FOLLOWS
 28 [EFFECTIVE JULY 1, 2023]: Sec. 8. (a) Except as provided in
 29 subsection (g); unless a board determines that a proposed rule should
 30 be subject to additional comments or makes a determination described
 31 in subsection (f); sections 2 through 7 and sections 9 through 14 of this
 32 chapter do not apply to a rulemaking action if the commissioner
 33 determines that:
 34 (1) the proposed rule constitutes:
 35 (A) an adoption or incorporation by reference of a federal law;
 36 regulation; or rule that:
 37 (i) is or will be applicable to Indiana; and
 38 (ii) contains no amendments that have a substantive effect
 39 on the scope or intended application of the federal law or
 40 rule;
 41 (B) a technical amendment with no substantive effect on an
 42 existing Indiana rule; or
 43 (C) an amendment to an existing Indiana rule, the primary and
 44 intended purpose of which is to clarify the existing rule; and
 45 (2) the proposed rule is of such nature and scope that there is no
 46 reasonably anticipated benefit to the environment or the persons
 47 referred to in section 7(a)(2) of this chapter from the following:
 48 (A) Exposing the proposed rule to diverse public comment
 49 under section 3 or 4 of this chapter.
 50 (B) Affording interested or affected parties the opportunity to

- 1 be heard under section 3 or 4 of this chapter.
- 2 (C) Affording interested or affected parties the opportunity to
- 3 develop evidence in the record collected under sections 3 and
- 4 4 of this chapter.
- 5 (b) If the commissioner makes a determination under subsection (a),
- 6 the commissioner shall prepare written findings under this section. The
- 7 full text of the commissioner's written findings shall be included in:
- 8 (1) the notice of adoption of the proposed rule; and
- 9 (2) the written materials to be considered by the board at the
- 10 public hearing held under this section.
- 11 (c) The notice of adoption of a proposed rule under this section
- 12 must:
- 13 (1) be published in the Indiana Register; and
- 14 (2) include the following:
- 15 (A) Draft rule language that includes the language described
- 16 in subsection (a)(1);
- 17 (B) A written comment period of at least thirty (30) days.
- 18 (C) A notice of public hearing before the appropriate board.
- 19 (d) 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 (c):
- 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 (c).
- 26 (3) The commissioner's findings under subsection (b).
- 27 (e) At the public hearing referred to in subsection (c), the board
- 28 may:
- 29 (1) adopt the proposed rule;
- 30 (2) adopt the proposed rule with amendments;
- 31 (3) reject the proposed rule;
- 32 (4) determine that additional public comment is necessary; or
- 33 (5) determine to reconsider the proposed rule at a subsequent
- 34 board meeting.
- 35 (f) If the board determines under subsection (e) that additional
- 36 public comment is necessary, the department shall publish a second
- 37 notice in accordance with section 4 of this chapter and complete the
- 38 rulemaking in accordance with this chapter.
- 39 (g) If the board adopts the proposed rule with amendments under
- 40 subsection (e)(2), the amendments must meet the logical outgrowth
- 41 requirements of section 10 of this chapter, except that the board, in
- 42 determining whether the amendments are a logical outgrowth of
- 43 comments provided to the board, and in considering whether the
- 44 language of comments provided to the board fairly apprised interested
- 45 persons of the specific subjects and issues contained in the
- 46 amendments, shall consider the comments provided to the board at the
- 47 public hearing referred to in subsection (c)(2)(C).
- 48 (h) This subsection applies to that part of a rule adopted under this
- 49 section that directly corresponds to and is based on a federal law, rule,
- 50 or regulation that is stayed or repealed, invalidated, vacated, or

1 otherwise nullified by a legislative, an administrative, or a judicial
2 action described in subdivision (1), (2), or (3): If:

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

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

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

25 (B) either:

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

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

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

35 (1) **that is the basis of a rule that is adopted under subsection**
36 **(c)(1) by the board; and based on a determination by the**
37 **commissioner under subsection (a)(1)(A)**

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

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

44 SECTION 60. IC 13-14-9-9 IS AMENDED TO READ AS
45 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 9. After complying
46 with sections 2 4 through 8 6 of this chapter, the board may, at the
47 board meeting held under section 5(a)(3) of this chapter:

48 (1) adopt a rule that is identical to the proposed rule published
49 under section 5(a)(2) of this chapter **or with amendments that**
50 **meet the substantially similar or logical outgrowth**

1 requirements of IC 4-22-2-29(c);

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

4 (3) (2) recommend amendments to the proposed rule; that do not
5 meet the criteria set forth in section 10 of this chapter;

6 (4) (3) reject the proposed rule; or

7 (5) (4) reconsider the proposed rule at a subsequent board
8 meeting in accordance with IC 4-22-2-26(d).

9 SECTION 61. IC 13-14-9-10 IS REPEALED [EFFECTIVE JULY
10 1, 2023]. Sec. 10: (a) A board may amend a proposed rule at a board
11 meeting held under section 5(a)(3) of this chapter and adopt the
12 amended rule under section 9(2) of this chapter if the amendments are
13 a logical outgrowth of:

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

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

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

21 (1) whether the language of:

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

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

26 fairly apprised interested persons of the specific subjects and
27 issues contained in the amendment; and

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

30 SECTION 62. IC 13-14-9-11 IS AMENDED TO READ AS
31 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 11. If the board
32 recommends amendments to a proposed rule under section 9(3) 9(2) of
33 this chapter, the full text of the proposed rule and accompanying
34 amendments shall be published in accordance with section 5(a)(2) of
35 this chapter. After that publication, the board shall hold another board
36 meeting on the proposed rule under section 5(a)(3) of this chapter.

37 SECTION 63. IC 13-14-9-12, AS AMENDED BY P.L.204-2007,
38 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
39 JULY 1, 2023]: Sec. 12. The board may reject a proposed rule under
40 section 9(4) 9 of this chapter if one (1) of the following conditions
41 exists:

42 (1) The following occurs or has occurred:

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

45 (B) either:

46 (i) (1) The board determines that necessary amendments to
47 the proposed rule will affect persons that reasonably require
48 an opportunity to comment under section 4 of this chapter.
49 considering the criteria set forth in section 8(a)(2) of this
50 chapter; or

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

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

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

10 ~~(B) either:~~

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

13 ~~(ii) (3)~~ The board determines that, due to a procedural or
 14 other defect in the implementation of ~~the applicable~~
 15 **rulemaking** requirements, ~~under sections 3 and 4 of this~~
 16 ~~chapter~~, an interested or affected party will be unfairly and
 17 substantially prejudiced if the public comment period under
 18 section 4 of this chapter is not again afforded and that no
 19 reasonable alternative method to obtain public comments is
 20 available to the interested or affected party other than the
 21 public comment period under section 4 of this chapter.

22 SECTION 64. IC 13-14-9-14, AS AMENDED BY P.L.133-2012,
 23 SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2023]: Sec. 14. (a) Except as provided in subsection (g),
 25 sections 1 through 13 of this chapter do not apply to a rule adopted
 26 under this section.

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

30 (1) an approved long term control plan; and

31 (2) an approved use attainability analysis that supports the use of
 32 a CSO wet weather limited use subcategory established under
 33 IC 13-18-3-2.5.

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

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

40 (1) Suggested rule language that amends the designated use to
 41 allow for a CSO wet weather limited use subcategory in
 42 accordance with IC 13-18-3-2.5.

43 (2) A written comment period of at least thirty (30) days.

44 (3) A notice of public hearing before the board.

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

48 (1) The full text of the proposed rule as most recently prepared by
 49 the department.

50 (2) Written responses of the department to written comments

1 received during the comment period referred to in subsection
2 (d)(2).

3 (3) The letter prepared by the department approving the long term
4 control plan and use attainability analysis.

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

7 (1) adopt the proposed rule to establish a new water quality
8 standard amending the designated use to allow for a CSO wet
9 weather limited use subcategory;

10 (2) adopt the proposed rule with amendments;

11 (3) reject the proposed rule; or

12 (4) determine to reconsider the proposed rule at a subsequent
13 board meeting.

14 (g) If the board adopts the proposed rule with amendments under
15 subsection (f)(2), the amendments must meet the **substantially similar**
16 **or** logical outgrowth requirements of ~~section 10 of this chapter, except~~
17 ~~that IC 4-22-2-29(c)~~. The board, in determining whether the
18 amendments are a logical outgrowth of comments provided to the
19 board, and in considering whether the language of comments provided
20 to the board fairly apprised interested persons of the specific subjects
21 and issues contained in the amendments, shall consider the comments
22 provided to the board at the public hearing referred to in subsection
23 (d)(3).

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

27 SECTION 65. IC 13-14-9-15 IS ADDED TO THE INDIANA
28 CODE AS A NEW SECTION TO READ AS FOLLOWS
29 [EFFECTIVE JULY 1, 2023]: **Sec. 15. Rules adopted in accordance**
30 **with this chapter by the department of environmental management**
31 **or a board that has rulemaking authority under this title expire as**
32 **provided in IC 4-22-2.6.**

33 SECTION 66. IC 13-14-9-16 IS ADDED TO THE INDIANA
34 CODE AS A NEW SECTION TO READ AS FOLLOWS
35 [EFFECTIVE JULY 1, 2023]: **Sec. 16. (a) For a rule document**
36 **subject to this chapter, the one (1) year period established under**
37 **IC 4-22-2-25 in which to adopt a rule and obtain the approval or**
38 **deemed approval of the governor commences on the date that the**
39 **initial public comment period notice for the rule document is**
40 **published in the Indiana Register under section 4 of this chapter.**

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

45 **(1) the reasons why the rule was not adopted and the expected**
46 **date the rule will be completed; and**

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

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

50 **(1) one (1) year after the department publishes the initial**
51 **notice of intent under this chapter; or**

1 **(2) the expected date contained in a notice concerning the rule**
 2 **that is provided to the publisher under subsection (b);**
 3 **a later approval or deemed approval is ineffective, and the rule**
 4 **may become effective only through another rulemaking action**
 5 **initiated under this chapter.**

6 SECTION 67. IC 13-14-9.5 IS REPEALED [EFFECTIVE JULY 1,
 7 2023]. (Expiration and Readoption of Administrative Rules).

8 SECTION 68. IC 13-19-3-3, AS AMENDED BY P.L.120-2022,
 9 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 UPON PASSAGE]: Sec. 3. (a) As used in this section and section 3.1
 11 of this chapter, "coal combustion residuals" means fly ash, bottom ash,
 12 boiler slag, and flue gas desulfurization materials generated from
 13 burning coal for the purpose of generating electricity by electric
 14 utilities and independent power producers.

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

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

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

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

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

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

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

38 (d) The department shall do the following:

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

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

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

48 (e) Not later than May 15, 2021, the department shall notify the
 49 United States Environmental Protection Agency of its intention to
 50 establish a state permit program described in subsection (d)(1) and to
 51 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.
- 43 Fees collected under this subsection shall be deposited in the CCR
 44 program fund established by section 3.2 of this chapter.
- 45 (j) Not later than July 1, 2027, and before the end of each
 46 succeeding period of five (5) years, the board shall review the:
 47 (1) costs to the department of operating the state permit program
 48 established under this section; and
 49 (2) revenue from the fees charged under subsection (i);
 50 as provided in IC 13-16-1-4. If the board determines that the revenue
 51 described in subdivision (2) is inadequate or excessive in relation to the

1 costs described in subdivision (1), the board shall, under IC 13-16-1-2,
 2 change the amount of one (1) or more of the fees established under
 3 subsection (i).

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

9 SECTION 69. IC 14-10-2-5, AS AMENDED BY HEA 1626-2023,
 10 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2023]: Sec. 5. (a) The department may adopt ~~emergency~~ rules
 12 under ~~IC 4-22-2-37.1~~ **IC 4-22-2** to carry out the duties of the
 13 department under the following:

- 14 (1) IC 14-9.
- 15 (2) This article.
- 16 (3) IC 14-11.
- 17 (4) IC 14-12-2.
- 18 (5) IC 14-14.
- 19 (6) IC 14-15.
- 20 (7) IC 14-17-3.
- 21 (8) IC 14-18, except IC 14-18-6 and IC 14-18-8.
- 22 (9) IC 14-19-1 and IC 14-19-8.
- 23 (10) IC 14-21.
- 24 (11) IC 14-22-3, IC 14-22-4, and IC 14-22-5.
- 25 (12) IC 14-23-1.
- 26 (13) IC 14-24.
- 27 (14) IC 14-25, except IC 14-25-8-3 and IC 14-25-13.
- 28 (15) IC 14-26.
- 29 (16) IC 14-27.
- 30 (17) IC 14-28.
- 31 (18) IC 14-29.
- 32 (19) IC 14-35-1, IC 14-35-2, and IC 14-35-3.
- 33 (20) IC 14-37.
- 34 (21) IC 14-38, except IC 14-38-3.
- 35 (22) IC 14-39.

36 (b) ~~A~~ **An emergency rule adopted under subsection (a) (as effective**
 37 **before July 1, 2023)** expires not later than one (1) year after the rule
 38 is accepted for filing by the publisher of the Indiana Register.

39 (c) A person who violates:

- 40 (1) an emergency rule adopted by the department **under**
 41 **IC 4-22-2-37.1 before July 1, 2023; or**
- 42 (2) **an interim rule adopted by the department under**
 43 **IC 4-22-2-37.2 after June 30, 2023;**

44 **to carry out a provision described in subsection (a)** commits a Class
 45 C infraction, unless otherwise specified under state law.

46 SECTION 70. IC 15-16-4-0.3 IS ADDED TO THE INDIANA
 47 CODE AS A NEW SECTION TO READ AS FOLLOWS
 48 [EFFECTIVE JULY 1, 2023]: **Sec. 0.3. The definitions in IC 15-16-5**
 49 **apply throughout this chapter.**

50 SECTION 71. IC 15-16-4-15.5 IS ADDED TO THE INDIANA

1 CODE AS A NEW SECTION TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 2023]: **Sec. 15.5. As used in this chapter,**
 3 **"general use pesticide" means a pesticide that is not a restricted**
 4 **use pesticide.**

5 SECTION 72. IC 15-16-4-31 IS REPEALED [EFFECTIVE JULY
 6 1, 2023]. ~~Sec. 31. As used in this chapter, "pesticide for use by~~
 7 ~~prescription only" means any pesticide that the board has found to be~~
 8 ~~more hazardous than a restricted use pesticide so that any specific use~~
 9 ~~and application must be determined and prescribed by a qualified pest~~
 10 ~~management specialist approved by the state chemist.~~

11 SECTION 73. IC 15-16-4-37, AS ADDED BY P.L.2-2008,
 12 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2023]: Sec. 37. As used in this chapter, "restricted use
 14 pesticide" means **the following:**

15 (1) Any pesticide classified as a restricted use pesticide by the
 16 administrator of the United States Environmental Protection
 17 Agency. ~~or~~

18 **(2) A pesticide designated as a restricted use pesticide in a law**
 19 **enacted by the general assembly.**

20 ~~(2)~~ **(3) Subject to section 50 of this chapter,** a pesticide that the
 21 board has determined to be unduly hazardous to persons, animals,
 22 plants, wildlife, waters, or lands other than the pests it is intended
 23 to prevent, destroy, control, or mitigate.

24 **(4) All formulations containing methomyl (Chemical**
 25 **Abstracts Service Reg. No. 16752-77-5).**

26 **(5) Any dicamba containing pesticide product that:**

27 **(A) contains a dicamba active ingredient concentration**
 28 **greater than or equal to six and one-half percent (6.5%);**
 29 **and**

30 **(B) is intended for agricultural production uses but is not**
 31 **labeled solely for use on turf or other nonagricultural use**
 32 **sites.**

33 SECTION 74. IC 15-16-4-50, AS AMENDED BY P.L.99-2012,
 34 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2023]: Sec. 50. (a) The board may ~~adopt rules under IC 4-22-2~~
 36 ~~to do the following:~~ ~~(1) Establish a list of~~ **recommend to the general**
 37 **assembly the addition, deletion, or reclassification of pesticides by**
 38 **submitting in an electronic format under IC 5-14-6 a report of the**
 39 **recommendations to the legislative council. In making a**
 40 **determination to add or reclassify a pesticide as a restricted use**
 41 **pesticides and pesticides for use by prescription only pesticide** for all
 42 of Indiana or designated areas within Indiana, if the board ~~finds~~ **must**
 43 **find** that the characteristics of a pesticide require that rules restricting
 44 the:

45 ~~(A)~~ **(1) sale;**

46 ~~(B)~~ **(2) distribution; or**

47 ~~(C)~~ **(3) use;**

48 of the pesticide by any person are necessary to prevent undue hazards
 49 to persons, animals, wildlife, lands, or waters, other than the pests that
 50 they are intended to prevent, destroy, control, or mitigate. **The board**
 51 **shall publish the board's findings in the Indiana Register.**

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

3 **(1)** Provide for the safe:

- 4 (A) handling;
 5 (B) transportation;
 6 (C) storage;
 7 (D) display;
 8 (E) distribution;
 9 (F) disposal; and
 10 (G) production;

11 of pesticide products and pesticide containers.

12 ~~(3)~~ **(2)** Restrict or prohibit the use of certain types of containers
 13 or packages for specific pesticides. The restrictions may apply to
 14 the:

- 15 (A) type of construction;
 16 (B) strength; or
 17 (C) size;

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

19 ~~(b) The board may adopt by reference the restricted use~~
 20 ~~classification of a pesticide that is maintained by the United States~~
 21 ~~Environmental Protection Agency.~~

22 ~~(c) The board may adopt rules to do the following:~~

23 ~~(+)~~ **(3)** Determine the time and conditions of the:

- 24 (A) sale;
 25 (B) distribution; or
 26 (C) use;

27 of pesticide products.

28 ~~(2)~~ **(4)** Require that any or all pesticide products be purchased,
 29 possessed, or used only under:

- 30 (A) permit;
 31 (B) certificate;
 32 (C) license; or
 33 (D) registration;

34 of the state chemist or under certain conditions or in certain
 35 quantities or concentrations.

36 ~~(3)~~ **(5)** Require all persons issued:

- 37 (A) permits;
 38 (B) certificates;
 39 (C) licenses; or
 40 (D) registrations;

41 under this subsection to maintain records as to the use of the
 42 pesticide products.

43 **(c) The state chemist shall maintain a list of each class of**
 44 **pesticides adopted by Indiana law or board rule on the website for**
 45 **the state chemist. Failure to include a pesticide on the list does not**
 46 **exempt a person from compliance with a law or rule for a pesticide**
 47 **designated by law or rule.**

48 SECTION 75. IC 15-16-4-52, AS ADDED BY P.L.2-2008,
 49 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 50 JULY 1, 2023]: Sec. 52. The state chemist may adopt rules under

1 IC 4-22-2 to administer this chapter, including rules providing for the
2 following:

- 3 (1) The collection and examination of samples of pesticide
4 products.
- 5 (2) Determining whether a pesticide product is highly toxic to
6 humans or wildlife.
- 7 (3) The issuance of permits to purchase, possess, or use
8 "restricted use pesticides". ~~and "pesticides for use by prescription~~
9 ~~only".~~
- 10 (4) Determining standards of coloring or discoloring for pesticide
11 products and to subject pesticide products to the requirements of
12 section 57 of this chapter.

13 SECTION 76. IC 15-16-4-52.5 IS ADDED TO THE INDIANA
14 CODE AS A NEW SECTION TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 2023]: **Sec. 52.5. (a) Neither the board nor**
16 **the state chemist may by rule or otherwise impose a requirement**
17 **or limitation on the storage, distribution, use, application, or**
18 **record keeping of a general use pesticide by:**

- 19 (1) a certified applicator;
- 20 (2) a commercial applicator;
- 21 (3) a licensed applicator for hire;
- 22 (4) a licensed applicator not for hire;
- 23 (5) a licensed pesticide business;
- 24 (6) a licensed public applicator; or
- 25 (7) a private applicator;

26 **that is more stringent than the requirements and limitations**
27 **applicable under federal law, federal regulations, or Indiana**
28 **statutory law to the general use pesticide or a pesticide product**
29 **containing a general use pesticide and no restricted use pesticide.**

30 **(b) A rule or other requirement or limitation of the board in**
31 **effect on June 30, 2023, that does not comply with this section is**
32 **voided on July 1, 2023, to the extent it conflicts with this section.**

33 SECTION 77. IC 15-16-4-57, AS AMENDED BY P.L.99-2012,
34 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
35 JULY 1, 2023]: Sec. 57. Except as provided in section 58 of this
36 chapter, a person may not produce, distribute, display, sell, or offer for
37 sale within Indiana or deliver for transportation or transport in
38 intrastate commerce or between points within Indiana through any
39 point outside Indiana any of the following:

- 40 (1) Any pesticide product that has not been registered under
41 section 61 of this chapter.
- 42 (2) Any pesticide product if any of the claims made for it or any
43 of the directions for its use differ in substance from the
44 representations made in connection with its registration.
- 45 (3) A pesticide product if the composition of the product differs
46 from the composition as represented in connection with its
47 registration. However, at the discretion of the state chemist, a
48 change in the labeling or formula of a pesticide may be made
49 within a registration period without requiring reregistration of the
50 product.
- 51 (4) Any pesticide product (except a bulk pesticide or a pesticide

1 in a container designed and constructed to accommodate the
 2 return and refill of the container) unless it is in the registrant's or
 3 the manufacturer's unbroken immediate container, and there is
 4 affixed to that container, and to any outside container or wrapper
 5 of the retail package through which the required information on
 6 the immediate container cannot be clearly read, a label bearing:

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

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

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

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

14 (6) Any pesticide product in containers violating rules adopted
 15 under section ~~50(a)(3)~~ **50(b)(2)** of this chapter. Pesticides found
 16 in containers that are unsafe due to damage may be seized and
 17 impounded.

18 (7) A highly volatile herbicide except on written permission by
 19 the state chemist.

20 (8) Any bulk pesticide unless it is accompanied in all transfers of
 21 custody or ownership by or held in storage vessels to which is
 22 affixed a label bearing the information specified in subdivision
 23 (4).

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

27 SECTION 78. IC 15-16-5-72 IS ADDED TO THE INDIANA
 28 CODE AS A NEW SECTION TO READ AS FOLLOWS
 29 [EFFECTIVE JULY 1, 2023]: **Sec. 72. (a) Except as provided in**
 30 **IC 4-22-2.3-9, a rule adopted under this chapter that becomes**
 31 **effective after June 30, 2023, may not impose a restriction or**
 32 **requirement concerning pesticides more stringent than a**
 33 **restriction or requirement imposed under federal law unless the**
 34 **restriction or requirement is specifically authorized by Indiana**
 35 **law.**

36 **(b) Restrictions or requirements specifically authorized to be**
 37 **more stringent than a restriction or requirement imposed under**
 38 **federal law include the following:**

39 **(1) Commercial termite control applicators (category 7b)**
 40 **must complete a practical hands-on training program to**
 41 **become certified.**

42 **(2) Commercial applicators must have access to the pesticide**
 43 **label when applying pesticides.**

44 **(3) Commercial for hire general use pesticide application**
 45 **businesses are required to show proof of having minimum**
 46 **liability insurance coverage.**

47 **(4) Commercial for hire general use pesticide applicators**
 48 **(category 7b) must disclose to customers any omissions from**
 49 **label required termite control applications.**

50 **(5) Commercial applicators and school employees applying**
 51 **general use pesticides at schools:**

- 1 **(A) may not apply when students are present;**
 2 **(B) must notify students, parents, and staff of planned and**
 3 **conducted applications;**
 4 **(C) must store pesticides safely;**
 5 **(D) must keep students and staff out of treated areas until**
 6 **spray has dried; and**
 7 **(E) may only apply rodenticide baits in areas inaccessible**
 8 **to students.**
 9 **(6) Commercial and private applicators must store and**
 10 **contain general use pesticide portable refillable containers**
 11 **(minibulks) safely to prevent releases to the environment.**
 12 **(7) Commercial and private applicators may not store, mix, or**
 13 **load general use pesticides within two hundred (200) feet of a**
 14 **community public drinking water well.**
 15 **(8) Commercial and private applicators must store general**
 16 **use pesticide containers on impervious surfaces within a**
 17 **wellhead protection area zone.**
 18 **(9) Commercial and private applicators must clean up general**
 19 **use pesticide spills within a wellhead protection area**
 20 **immediately upon discovery.**
 21 **(10) Commercial and private applicators may not open burn**
 22 **general use pesticide containers.**
- 23 SECTION 79. IC 25-1-5-4, AS AMENDED BY HEA 1460-2023,
 24 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2023]: Sec. 4. (a) The agency shall employ necessary staff,
 26 including specialists and professionals, to carry out the administrative
 27 duties and functions of the boards, including but not limited to:
 28 (1) notice of board meetings and other communication services;
 29 (2) recordkeeping of board meetings, proceedings, and actions;
 30 (3) recordkeeping of all persons licensed, regulated, or certified
 31 by a board;
 32 (4) administration of examinations; and
 33 (5) administration of license or certificate issuance or renewal.
 34 (b) In addition, the agency:
 35 (1) shall prepare a consolidated statement of the budget requests
 36 of all the boards described in IC 25-0.5-5;
 37 (2) may coordinate licensing or certification renewal cycles,
 38 examination schedules, or other routine activities to efficiently
 39 utilize agency staff, facilities, and transportation resources, and to
 40 improve accessibility of board functions to the public;
 41 (3) may consolidate, where feasible, office space, recordkeeping,
 42 and data processing services;
 43 (4) shall operate and maintain the electronic registry of
 44 professions established under IC 25-1-5.5;
 45 (5) shall post each board's public meeting agenda on the
 46 applicable board's website not less than seventy-two (72) hours
 47 before a board's public meeting;
 48 (6) shall post each board's public meeting minutes on the
 49 applicable board's website not more than fourteen (14) calendar
 50 days after adoption of the minutes by the board;
 51 (7) shall post any vacancy on a board on the applicable board's

- 1 website within fourteen (14) calendar days of the vacancy;
 2 (8) notwithstanding any other law:
 3 (A) **shall** prescribe the application form and manner for each
 4 board; and
 5 (B) **shall** make any new application form publicly available on
 6 the applicable board's website for sixty (60) calendar days
 7 before being adopted by the agency; and
 8 (9) shall send notification of incomplete items in an application
 9 to the applicant every fourteen (14) calendar days after the
 10 applicant initiates the application until the earlier of **the**
 11 **following:**
 12 (A) **The date** the application is completed. ~~or~~
 13 (B) One (1) calendar year after the applicant initiates the
 14 application.
 15 (c) In administering the renewal of licenses or certificates under this
 16 chapter, the agency shall send a notice of the upcoming expiration of
 17 a license or certificate to each holder of a license or certificate at least
 18 ninety (90) days before the expiration of the license or certificate. The
 19 notice must inform the holder of the license or certificate of the need
 20 to renew and the requirement of payment of the renewal fee. If this
 21 notice of expiration is not sent by the agency, the holder of the license
 22 or certificate is not subject to a sanction for failure to renew if, once
 23 notice is received from the agency, the license or certificate is renewed
 24 within forty-five (45) days after receipt of the notice.
 25 (d) In administering an examination for licensure or certification,
 26 the agency shall make the appropriate application forms available at
 27 least thirty (30) days before the deadline for submitting an application
 28 to all persons wishing to take the examination.
 29 (e) The agency may require an applicant for license renewal to
 30 submit evidence proving that:
 31 (1) the applicant continues to meet the minimum requirements for
 32 licensure; and
 33 (2) the applicant is not in violation of:
 34 (A) the statute regulating the applicant's profession; or
 35 (B) rules adopted by the board regulating the applicant's
 36 profession.
 37 (f) The agency shall process an application for renewal of a license
 38 or certificate:
 39 (1) not later than ten (10) days after the agency receives all
 40 required forms and evidence; or
 41 (2) within twenty-four (24) hours after the time that an applicant
 42 for renewal appears in person at the agency with all required
 43 forms and evidence.
 44 This subsection does not require the agency to issue a renewal license
 45 or certificate to an applicant if subsection (g) applies.
 46 (g) The agency may delay issuing a license renewal for up to one
 47 hundred twenty (120) days after the renewal date for the purpose of
 48 permitting the board to investigate information received by the agency
 49 that the applicant for renewal may have committed an act for which the
 50 applicant may be disciplined. If the agency delays issuing a license

1 renewal, the agency shall notify the applicant that the applicant is being
 2 investigated. Except as provided in subsection (h), before the end of the
 3 one hundred twenty (120) day period, the board shall do one (1) of the
 4 following:

5 (1) Deny the license renewal following a personal appearance by
 6 the applicant before the board.

7 (2) Issue the license renewal upon satisfaction of all other
 8 conditions for renewal.

9 (3) Issue the license renewal and file a complaint under IC 25-1-7.

10 (4) Upon agreement of the applicant and the board and following
 11 a personal appearance by the applicant before the board, renew
 12 the license and place the applicant on probation status under
 13 IC 25-1-9-9.

14 (h) If an individual fails to appear before the board under subsection
 15 (g), the board may take action on the applicant's license allowed under
 16 subsection (g)(1), (g)(2), or (g)(3).

17 (i) The applicant's license remains valid until the final determination
 18 of the board is rendered unless the renewal is denied or the license is
 19 summarily suspended under IC 25-1-9-10.

20 (j) The license of the applicant for a license renewal remains valid
 21 during the one hundred twenty (120) day period unless the license
 22 renewal is denied following a personal appearance by the applicant
 23 before the board before the end of the one hundred twenty (120) day
 24 period. If the one hundred twenty (120) day period expires without
 25 action by the board, the license shall be automatically renewed at the
 26 end of the one hundred twenty (120) day period.

27 (k) The board's renewal of a license does not preclude the board
 28 from imposing sanctions on the licensee as a result of a complaint filed
 29 by the attorney general after renewal of the license.

30 (l) Notwithstanding any other statute, the agency may stagger
 31 license or certificate renewal cycles. However, if a renewal cycle for a
 32 specific board or committee is changed, the agency must obtain the
 33 approval of the affected board or committee.

34 (m) An application for a license, certificate, registration, or permit
 35 is abandoned without an action of the board, if the applicant does not
 36 complete the requirements to complete the application within one (1)
 37 year after the date on which the application was filed. However, the
 38 board may, for good cause shown, extend the validity of the application
 39 for additional thirty (30) day periods. An application submitted after
 40 the abandonment of an application is considered a new application.

41 SECTION 80. IC 25-1-5.3 IS ADDED TO THE INDIANA CODE
 42 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 43 JULY 1, 2023]:

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

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

46 (1) "Agency" has the meaning set forth in IC 25-1-5-2.

47 (2) "Applicant" has the meaning set forth in IC 25-1-5-11.

48 (3) "Board" has the meaning set forth in IC 25-1-5-2.

49 (4) "Compliant", with respect to a licensure rule, means a
 50 licensure rule that the agency or a board has adopted.

51 (5) "Enactment date" means the date on which a statute

1 requires rulemaking for a licensure rule to become effective
2 or otherwise requires rulemaking to commence.

3 (6) "Executive director" refers to the individual described in
4 IC 25-1-5-5.

5 (7) "Licensee" has the meaning set forth in IC 25-1-5-11.

6 (8) "Licensure rule" means a rule that:

7 (A) relates to the issuance of a license, certificate,
8 registration, or permit, or a requirement or prerequisite
9 for obtaining a license, or keeping a license in good
10 standing; and

11 (B) is required by statute with an enactment date after
12 January 1, 2023, to be adopted by the agency or a board.

13 (9) "Material detriment" means:

14 (A) an inability to obtain a license, certification, permit, or
15 other credential from the agency or a board;

16 (B) an inability to:

17 (i) practice;

18 (ii) perform a procedure; or

19 (iii) engage in a particular professional activity in
20 Indiana or another jurisdiction; or

21 (C) any other substantial burden to professional or
22 business interests.

23 (10) "Noncompliant", with respect to a licensure rule, means
24 a licensure rule that the agency or a board has not adopted as
25 an interim rule under IC 4-22-2-37.2 within six (6) months of
26 the enactment date.

27 **Sec. 2. (a) If a licensee or applicant believes that the agency or**
28 **a board has failed to adopt a licensure rule within six (6) months of**
29 **the enactment date, an applicant or licensee who has suffered a**
30 **material detriment as a result of a noncompliant licensure rule**
31 **may seek damages from the agency or board by bringing an action**
32 **in a court of competent jurisdiction.**

33 **(b) A court shall not certify a class in any matter seeking**
34 **damages under this section.**

35 **(c) In a matter seeking damages under this section, a court may**
36 **order the following:**

37 **(1) An injunction requiring adoption of a compliant interim**
38 **licensure rule not earlier than six (6) months from the date of**
39 **the order.**

40 **(2) Damages equal to the amount of the material detriment**
41 **caused by the noncompliant licensure rule, including**
42 **prospective damages through the date established under**
43 **subdivision (1).**

44 **(3) Court costs and attorney's fees.**

45 **(d) IC 34-13-3 applies to an action brought under this section.**

46 SECTION 81. IC 27-1-44.5-11, AS ADDED BY P.L.195-2021,
47 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
48 JULY 1, 2023]: Sec. 11. (a) The department shall adopt emergency
49 rules under ~~IC 4-22-2-37.1~~ IC 4-22-2 to implement this chapter. The
50 rules must include a requirement that health payer data sources submit
51 necessary information to the administrator. Rules enacted under this

1 subsection must cover all health payer data sources as follows:

2 (1) The department shall adopt rules that apply to health payers
3 regulated under IC 27.

4 (2) The office of the secretary of family and social services shall
5 adopt rules that apply to health payers regulated under IC 12.

6 (b) The department shall adopt **emergency provisional** rules under
7 IC 4-22-2-37.1 establishing a fee formula for data licensing and the
8 collection and release of claims data.

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

13 SECTION 82. IC 34-52-2-1.5 IS ADDED TO THE INDIANA
14 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 2023]: **Sec. 1.5. (a) In a proceeding under**
16 **IC 4-21.5-5 to judicially review a final order made by a state**
17 **agency, the court shall apply the same standard as an**
18 **administrative law judge under IC 4-21.5-3-27.5 regarding an**
19 **order for the payment of attorney's fees.**

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

22 SECTION 83. [EFFECTIVE UPON PASSAGE] (a) **After June 30,**
23 **2023, a rule may be adopted as a provisional rule only for the**
24 **purposes and through the procedures in IC 4-22-2-37.1 (as effective**
25 **after June 30, 2023). Any additional authority in a statute outside**
26 **IC 4-22 to adopt rules through the emergency rulemaking**
27 **procedures in IC 4-22-2-37.1 (as effective before July 1, 2023, or**
28 **after June 30, 2023) is void. The code revision commission shall**
29 **provide in calendar year 2023 for the preparation of a bill for**
30 **introduction in the 2024 regular session of the general assembly**
31 **that removes language outside IC 4-22 permitting the adoption of**
32 **emergency rules.**

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

34 SECTION 84. **An emergency is declared for this act.**

(Reference is to EHB 1623 as reprinted April 12, 2023.)

Conference Committee Report
on
Engrossed House Bill 1623

Signed by:

Representative Bartels
Chairperson

Senator Garten

Representative Campbell

Senator Pol Jr.

House Conferees

Senate Conferees