

PROPOSED AMENDMENT

HB 1623 # 3

DIGEST

Rulemaking. Indicates that the changes to the rulemaking process are prospective. Indicates that data, studies, and analyses supporting a regulatory analysis are required to be submitted to the legislative services agency only if requested in the manner specified by the legislative council or personnel subcommittee. Requires an agency to submit its summary of comments on a rule and its response to the comments to the attorney general, the governor, and the publisher for publication in the Indiana Register. Requires the attorney general to specify the basis for disapproving an emergency, interim, or expedited rule. Requires an agency to conduct one comment period before adopting a rule using the interim rulemaking procedures. Specifies when expedited rules expire and limits the number of times expedited rules may be extended. Indicates how to calculate the one year period in which an environmental agency must complete a rulemaking process. Provides a date by which an agency must submit to the publisher a notice to readopt an expiring rule. Makes cross reference, name, and other conforming changes in the text of the bill.

- 1 Page 3, between lines 35 and 36, begin a new paragraph and insert:
2 "SECTION 4. IC 4-22-2-0.1, AS AMENDED BY P.L.53-2014,
3 SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2023]: Sec. 0.1. **(a)** The amendments made to this chapter by
5 P.L.44-1995 apply as follows:
6 (1) The amendments made to sections 13, 19, 23, 25, and 28 of
7 this chapter apply to a rulemaking action that commences after
8 June 30, 1995.
9 (2) The addition of sections 23.1 and 46 (repealed) of this chapter
10 applies to a rulemaking action that commences after June 30,
11 1995.
12 **(b) This chapter (as effective January 1, 2023) continues to**
13 **apply after June 30, 2023, to a rulemaking action that is**
14 **commenced under this chapter before July 1, 2023, and is pending**
15 **on July 1, 2023."**
16 Page 4, line 36, delete "or 37.2" and insert "**37.2, or 37.3**".
17 Page 4, line 40, delete "or 37.2" and insert "**37.2, or 37.3**".
18 Page 5, line 14, after "17.5." insert "**(a)**".
19 Page 5, between lines 19 and 20, begin a new paragraph and insert:

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

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

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

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

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

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

15 Page 7, delete line 34.

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

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

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

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

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

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

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

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

28 Page 14, delete line 36.

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

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

33 Page 17, line 3, strike "of".

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

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

36 Page 17, between lines 28 and 29, begin a new paragraph and insert:
 37 "SECTION 18. IC 4-22-2-27 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 27. The individual or
 39 group of individuals who will finally adopt the rule under section 29 of
 40 this chapter shall fully consider **written** comments received **by the**

1 **agency during each comment period and comments received** at the
 2 public hearing required by section 26 of this chapter and may consider
 3 any other information before adopting the rule. Attendance at the
 4 public hearing or review of a written record or summary of the public
 5 hearing is sufficient to constitute full consideration.

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

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

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

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

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

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

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

32 **"(c) An agency shall notify the public of its intention to adopt an**
 33 **interim rule by complying with the publication requirements in**
 34 **this section. The agency shall cause a notice of a public comment**
 35 **period and the full text of the agency's proposed interim rule**
 36 **(excluding the full text of a matter incorporated by reference under**
 37 **section 21 of this chapter) to be published once in the Indiana**
 38 **Register. The publisher shall review materials submitted under this**
 39 **section and determine the date that the publisher intends to include**
 40 **the material in the Indiana Register. After establishing the**

1 intended publication date and receiving the public comment period
 2 information from the agency, the publisher shall provide a written
 3 or an electronic mail authorization to proceed to the agency.

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

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

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

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

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

13 The statement required under this subdivision must include
 14 a reference to any data, studies, or analyses relied upon by the
 15 agency in determining that the imposition of the requirement
 16 or cost is necessary and where and how a person may inspect
 17 and copy or electronically download the data, studies, or
 18 analyses.

19 (3) A date that is thirty (30) days after the notice is published
 20 in the Indiana Register by which written comments are due
 21 and a statement explaining that any person may submit
 22 written comments concerning the proposed expedited rule
 23 during the public comment period and instructions on when,
 24 where, and how the person may submit written comments.

25 However, inadequacy or insufficiency of the subject matter
 26 description under subdivision (1) or a statement of justification
 27 under subdivision (2) in a notice does not invalidate a rulemaking
 28 action. An agency may continue the comment period by publishing
 29 a subsequent notice in the Indiana Register extending the comment
 30 period.

31 (e) Before adopting the interim rule, the agency shall prepare a
 32 written response to comments received by the agency, including the
 33 reasons for rejecting any recommendations made in the comments.

34 (f) After an agency has completed the initial public comment
 35 period of at least thirty (30) days in length and complied with
 36 subsection (e), the agency may:

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

39 (2) adopt a revised version of a proposed interim rule
 40 published under this section and include provisions that did

1 **not appear in the initially published proposed version.**
 2 **An agency may not adopt an interim rule that substantially differs**
 3 **from the version of the proposed interim rule published in the**
 4 **Indiana Register under this section, unless it is a logical outgrowth**
 5 **of any proposed interim rule as supported by any written**
 6 **comments submitted during the public comment period.**

7 **(g) After the agency adopts the interim rule, the agency shall**
 8 **submit the following to the publisher for filing:".**

9 Page 29, between lines 39 and 40, begin a new line block indented
 10 and insert:

11 **"(2) A summary of the comments received by the agency**
 12 **during the comment period and the agency's response to the**
 13 **comments.".**

14 Page 29, line 40, delete "(2)" and insert "(3)".

15 Page 30, line 1, delete "(3)" and insert "(4)".

16 Page 30, line 3, delete "(4)" and insert "(5)".

17 Page 30, line 5, delete "The".

18 Page 30, delete lines 6 through 7.

19 Page 30, line 8, delete "governor.".

20 Page 30, line 10, delete "(e)" and insert "(h)".

21 Page 30, line 10, delete "(d)" and insert "(g)".

22 Page 30, line 17, delete "(f)" and insert "(i)".

23 Page 30, line 22, delete "(e)." and insert "(h)".

24 Page 30, delete lines 30 through 38, begin a new paragraph and
 25 insert:

26 **"(j) An agency may amend an interim rule with another interim**
 27 **rule by following the procedures in this section for adoption of an**
 28 **interim rule. An interim rule and all subsequent rules on the same**
 29 **subject adopted under section 37.1 or 37.3 of this chapter or this**
 30 **section expire not later than four hundred twenty-five (425) days**
 31 **after the initial interim rule is accepted for filing under subsection**
 32 **(h). The interim rule, including all subsequent interim rules**
 33 **adopted under section 37.1 or 37.3 of this chapter or this section on**
 34 **the same subject, may not be subsequently extended under section**
 35 **37.1 or 37.3 of this chapter or this section after four hundred**
 36 **twenty-five (425) days.".**

37 Page 30, line 39, delete "(h)" and insert "(k)".

38 Page 30, line 39, delete "(i)," and insert "(l)".

39 Page 31, line 1, delete "(e)." and insert "(h)".

40 Page 31, line 7, delete "(i)" and insert "(l)".

- 1 Page 31, line 8, delete "emergency" and insert **"interim"**.
- 2 Page 31, line 8, delete "(h)" and insert **"(k)"**.
- 3 Page 31, line 9, delete "emergency" and insert **"interim"**.
- 4 Page 31, between lines 11 and 12, begin a new line blocked left and
5 insert:
6 **"A notice of objection to an interim rule by the attorney general**
7 **must include findings that explain the basis for the determination.**
8 **The notice of objection shall be provided to the agency in an**
9 **electronic format."**
- 10 Page 31, line 19, delete "on a subject for which the" and insert
11 **"described in IC 4-22-2.3"**.
- 12 Page 31, line 20, delete "agency has rulemaking authority".
- 13 Page 31, line 24, delete "is:" and insert **"is appropriate for a rule**
14 **described in IC 4-22-2.3"**.
- 15 Page 31, delete lines 25 through 29.
- 16 Page 31, line 30, delete "the approval of" and insert **"a**
17 **determination from"**.
- 18 Page 31, line 31, delete "office of management and budget" and
19 insert **"governor"**.
- 20 Page 31, line 34, delete "office of management and budget" and
21 insert **"governor"**.
- 22 Page 31, line 35, delete "office of management and budget." and
23 insert **"governor."**.
- 24 Page 31, line 36, delete "office of management and budget" and
25 insert **"governor"**.
- 26 Page 32, line 26, after "A" insert **"date that is thirty (30) days after**
27 **the notice is published in the Indiana Register by which written**
28 **comments are due and a"**.
- 29 Page 32, line 33, after "action." insert **"An agency may continue**
30 **the comment period by publishing a subsequent notice in the**
31 **Indiana Register extending the comment period."**
- 32 Page 32, line 38, delete "a public comment period of" and insert
33 **"the comment period under this section"**.
- 34 Page 32, line 39, delete "at least thirty (30) days in length".
- 35 Page 33, line 24, after "subsection." insert **"The substantive text of**
36 **the adopted expedited rule must be substantially similar to the text**
37 **of the proposed expedited rule submitted to the governor. An**
38 **expedited rule may suspend but not repeal a rule approved by the**
39 **governor under section 34 of this chapter."**

1 Page 34, line 4, delete "expires:" and insert "**expires as provided in**
2 **IC 4-22-2.3. An agency may continue an expedited rule for an**
3 **additional period after it would otherwise expire only as permitted**
4 **in IC 4-22-2.3.**".

5 Page 34, delete lines 5 through 8.

6 Page 34, line 20, delete "emergency" and insert "**expedited**".

7 Page 34, line 21, delete "emergency" and insert "**expedited**".

8 Page 34, between lines 23 and 24, begin a new line blocked left and
9 insert:

10 "**A notice of objection to an expedited 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 Page 40, line 7, delete "section sets" and insert "**subsection and**
15 **subsection (b) set**".

16 Page 41, line 17, after "IC 4-22-2-37.3." insert "**An expedited rule**
17 **described in this section may not be continued in another expedited**
18 **rule after the expiration of the initial expedited rule.**".

19 Page 41, line 23, after "Register." insert "**An expedited rule**
20 **described in this section may be continued in another expedited**
21 **rule only if the governor determines under IC 4-22-2-37.3(b) that**
22 **the policy options available to the agency are so limited that use of**
23 **the additional notice, comment, and review procedures in**
24 **IC 4-22-2-23 through IC 4-22-2-36 would provide no benefit to**
25 **persons regulated or otherwise affected by the rule.**".

26 Page 41, line 30, after "Register." insert "**An expedited rule**
27 **described in this section may not be continued in another expedited**
28 **rule after the expiration of the initial expedited rule.**".

29 Page 41, line 35, after "Register." insert "**An expedited rule**
30 **described in this section may not be continued in another expedited**
31 **rule after the expiration of the initial expedited rule.**".

32 Page 42, line 12, delete "that" and insert "**after**".

33 Page 42, line 15, after "under" insert "**IC 24-4.4-1-101 (licensing**
34 **system for creditors and mortgage loan originators) or**".

35 Page 42, between lines 19 and 20, begin a new paragraph and insert:

36 "**(c) The department of financial institutions shall adopt rules**
37 **under IC 4-22-2-37.3 in the same manner provided in subsection**
38 **(a) for the adjustments required under IC 24-9-2-8 concerning high**
39 **cost home loans. The rule expires not later than January 1 of the**
40 **next odd-numbered year after the department of financial**

1 institutions is required to issue the rule.

2 (d) The department of financial institutions may adopt rules
3 described in 34-55-10-2 (bankruptcy exemptions; limitations) and
4 IC 34-55-10-2.5 in conformity with the procedures in IC 4-22-2-23
5 through IC 4-22-2-36 or the expedited procedures in
6 IC 4-22-2-37.3. A rule adopted under IC 4-22-2-37.3 expires not
7 later than two (2) years after the adopted rule is accepted for filing
8 by the publisher of the Indiana Register.

9 (e) An expedited rule described in this section may be continued
10 in another expedited rule only if the governor determines under
11 IC 4-22-2-37.3(b) that the policy options available to the agency are
12 so limited that use of the additional notice, comment, and review
13 procedures in IC 4-22-2-23 through IC 4-22-2-36 would provide no
14 benefit to persons regulated or otherwise affected by the rule."

15 Page 42, line 37, after "Register." insert "An expedited rule
16 described in this section may not be continued in another expedited
17 rule after the expiration of the initial expedited rule."

18 Page 45, line 16, after "publisher" insert "not later than the first
19 regular business day in September of the year preceding the year
20 in which the rule expires under this chapter".

21 Page 45, line 24, delete "at least".

22 Page 46, line 12, after "period" insert "under section 5 of this
23 chapter".

24 Page 55, delete lines 31 through 41, begin a new line block indented
25 and insert:

26 "(1) that has been preliminarily adopted by a board in a form that
27 is:

28 (A) identical to; or

29 (B) not substantively different from;

30 the proposed rule published in a second notice under section 4 of
31 this chapter; or

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

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

37 Page 57, line 15, reset in roman "In addition to the requirements of
38 section 8 of".

39 Page 57, line 16, reset in roman "this chapter,".

40 Page 57, line 16, delete "The" and insert "the".

1 Page 58, between lines 5 and 6, begin a new paragraph and insert:
2 "SECTION 46. IC 13-14-9-16 IS ADDED TO THE INDIANA
3 CODE AS A NEW SECTION TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2023]: **For a rule document subject to this**
5 **chapter, the one (1) year period established under IC 4-22-2-25 in**
6 **which to adopt a rule and obtain the approval or deemed approval**
7 **of the governor commences on the date that the initial comment**
8 **period notice for the rule document is published in the Indiana**
9 **Register under section 3 of this chapter, (if the section 3 comment**
10 **period is waived under section 7 of this chapter) section 4 of this**
11 **chapter, section 8 of this chapter, or section 14 of this chapter (as**
12 **applicable). If an agency determines that a rule cannot be adopted**
13 **within one (1) year after the publication of the notice, the agency**
14 **shall, before two hundred fifty (250) days following the publication**
15 **of the notice, notify the publisher by electronic means:**
16 **(1) the reasons why the rule was not adopted and the expected**
17 **date the rule will be completed; and**
18 **(2) the expected date the rule will be approved or deemed**
19 **approved by the governor or withdrawn under IC 4-22-2-41.**
20 **(b) If a rule is not approved before the later of:**
21 **(1) one (1) year after the agency publishes the initial notice of**
22 **intent under this chapter; or**
23 **(2) the expected date contained in a notice concerning the rule**
24 **that is provided to the publisher under subsection (a);**
25 **a later approval or deemed approval is ineffective, and the rule**
26 **may become effective only through another rulemaking action**
27 **initiated under this chapter."**
28 Renumber all SECTIONS consecutively.
 (Reference is to HB 1623 as introduced.)