

PROPOSED AMENDMENT

HB 1623 # 11

DIGEST

Amendment of HB 1623. The amendment does the following: (1) Sets standards for adoption of rules setting fees, fines, or civil penalties, including review by the budget committee. (2) Requires agencies to webcast rulemaking public hearings and provide for remote testimony. (3) Requires an agency to conduct a public hearing during the first comment period for a proposed rule. (4) Permits a proposed rule to be adopted without a second comment period if the agency does not receive any substantive comments during the first comment period or public hearing. (5) Provides that environmental agencies have the same comment periods as other agencies for most rulemaking actions. (6) Replaces the term "emergency rule" with the term "provisional rule". (7) Consolidates two provisions establishing separate procedures for interim rulemaking and expedited rulemaking into one procedure called "interim" rulemaking. (8) Provides that public contracts and certain other information related to government purchase of goods and services are public records and must be published on the transparency portal maintained by the auditor of state. (9) Specifies that environmental agency preapproval of biomass anaerobic digestion facilities and biomass gasification facilities must be reviewed according to the procedures and timelines applicable to confined feeding operations. (10) Requires classification of pesticides as "restricted use pesticides" or "pesticide for use by prescription only" to be made by a bill enacted by the general assembly. (11) Requires pesticide review board and state chemist rules establishing restrictions and limitations for pesticides to be not more stringent than federal requirements. (12) Makes changes in the conditions under which a professional or an occupational license applicant or licensee can recover damages for failure of a professional or an occupational licensing agency to adopt rules related to the application or license. (13) Authorizes the department of insurance to adopt permanent rules in addition to interim rules. (14) Requires that an agency must pay the attorney's fees incurred by a person in a judicial review proceeding arising under the general administrative adjudication law when the court determines that the agency acted under an invalid rule or failed to demonstrate that the agency acted with legal authority. (15) Provides transitional provisions. (16) Makes other related changes.

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- 1 Page 2, line 21, delete "If" and insert "**(2)** If".
 - 2 Page 3, line 18, after "IC 4-21.5-3-27.5" insert "**and**
 - 3 **IC 34-52-2-1.5**".
 - 4 Page 3, delete lines 21 through 35, begin a new paragraph and
 - 5 insert:
 - 6 "SECTION 3. IC 4-21.5-3-27.5, AS ADDED BY P.L.199-2021,
 - 7 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 - 8 JULY 1, 2023]: Sec. 27.5. In a proceeding under this chapter
 - 9 concerning an agency action, the administrative law judge shall order
 - 10 the agency to pay the reasonable attorney's fees incurred in the
 - 11 proceeding by the **prevailing** party challenging the agency action if:

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

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

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

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

7 **(3) the agency has failed to demonstrate that the agency acted**
8 **within its legal authority."**

9 Page 4, between lines 7 and 8, begin a new paragraph and insert:

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

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

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

20 (2) implements, interprets, or prescribes:

21 (A) law or policy; or

22 (B) the organization, procedure, or practice requirements of an
23 agency.

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

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

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

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

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

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

37 Page 4, delete lines 36 through 42, begin a new paragraph and
38 insert:

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

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

1 **and public comment concerning proposed rules for the boards**
 2 **listed in IC 13-14-9-1; and**

3 **(2) the department of environmental management and the**
 4 **boards listed in IC 13-14-9-1 shall comply with the procedures**
 5 **in IC 13-14-9 in lieu of complying with sections 24, 26, 27, and**
 6 **29 (except section 29(c)) of this chapter. do not apply to**
 7 **rulemaking actions under IC 13-14-9.**

8 **In adopting rules, all other provisions of IC 4-22-2 apply to these**
 9 **agencies."**

10 Page 5, delete lines 1 through 4.

11 Page 5, line 8, delete "37.2, or 37.3" and insert "**or 37.2**".

12 Page 5, line 12, delete "37.2, or 37.3" and insert "**or 37.2**".

13 Page 5, between lines 25 and 26, begin a new paragraph and insert:

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

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

25 **(e) The office of management and budget in consultation with**
 26 **the office of technology and the publisher shall establish how and**
 27 **where webcasts will be available, how agencies will provide**
 28 **opportunities for the general public to attend and comment**
 29 **remotely, and where notices of upcoming webcasts will be posted.**
 30 **The governor, by executive order, may delay the implementation**
 31 **of subsection (c) or (d), or both, for one (1) or more agencies if the**
 32 **governor finds that implementation of subsection (c) or (d), or**
 33 **both, is not technically feasible. The governor shall include specific**
 34 **findings concerning the reasons for a delay in the executive order.**
 35 **A delay under this subsection may not extend beyond December 31,**
 36 **2025.**

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

- 1 Page 5, after line 42, begin a new paragraph and insert:
 2 "SECTION 9. IC 4-22-2-19, AS AMENDED BY P.L.53-2014,
 3 SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 4 JULY 1, 2023]: Sec. 19. (a) ~~Except as provided in section 23.1 of this~~
 5 ~~chapter~~, This section does not apply to the adoption of rules
 6 (†) required to receive or maintain:
 7 (A) (1) delegation;
 8 (B) (2) primacy; or
 9 (C) (3) approval;
 10 for state implementation or operation of a program established
 11 under federal law.
 12 (2) ~~that amend an existing rule;~~
 13 (3) ~~required or authorized by statutes enacted before June 30,~~
 14 ~~1995; or~~
 15 (4) ~~required or authorized by statutes enacted before June 30,~~
 16 ~~1995; and recodified in the same or similar form after June 29,~~
 17 ~~1995; in response to a program of statutory recodification~~
 18 ~~conducted by the code revision commission.~~
 19 (b) If an agency will have statutory authority to adopt a rule at the
 20 time that the rule becomes effective, the agency may conduct any part
 21 of its rulemaking action before the statute authorizing the rule becomes
 22 effective.
 23 (c) However, an agency shall:
 24 (1) begin ~~the a~~ rulemaking process **needed to implement the**
 25 **statutory change** not later than sixty (60) days after the effective
 26 date of the statute that authorizes the rule; or
 27 (2) if an agency cannot comply with subdivision (1), provide
 28 electronic notice to the publisher stating the reasons for the
 29 agency's noncompliance.
 30 (c) **For purposes of this section, a rulemaking process is**
 31 **commenced when:**
 32 **(1) the agency publishes a proposed rule under section 23 or**
 33 **37.2 of this chapter; or**
 34 **(2) in the case of a change in a statute described in section 38**
 35 **of this chapter, the date the agency files with the publisher a**
 36 **rule document under section 38 of this chapter.**
 37 **If an interim rulemaking procedure is commenced under section**
 38 **37.2 of this chapter, the agency shall commence a permanent**
 39 **rulemaking process under section 23 of this chapter before the**
 40 **adopted interim rule expires."**

- 1 Page 6, line 3, reset in roman "or".
- 2 Page 6, line 3, after "IC 13-14-9.5" insert "**IC 13-14-9**".
- 3 Page 6, between lines 16 and 17, begin a new paragraph and insert:
- 4 "SECTION 10. IC 4-22-2-19.6 IS ADDED TO THE INDIANA
- 5 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 6 [EFFECTIVE JANUARY 1, 2023 (RETROACTIVE)]: **Sec. 19.6. (a)**
- 7 **A rule adopted under this article or IC 13-14-9 that includes a fee,**
- 8 **fine, or civil penalty must comply with this section. Subsections (b),**
- 9 **(c), and (d) do not apply to a rule that must be adopted in a certain**
- 10 **form to comply with federal law.**
- 11 **(b) For each fee, fine, or civil penalty imposed by an agency that**
- 12 **is not set as a specific amount in a state law, a rule must describe**
- 13 **the circumstances for which the agency will assess a fee, fine, or**
- 14 **civil penalty and set forth the amount of the fee, fine, or civil**
- 15 **penalty:**
- 16 **(1) as a specific dollar amount;**
- 17 **(2) under a formula by which a specific dollar amount can be**
- 18 **reasonably calculated by persons regulated or otherwise**
- 19 **affected by the rule; or**
- 20 **(3) as a range of potential dollar amounts, stating the factors**
- 21 **that the agency will utilize to set a specific dollar amount in an**
- 22 **individual case with sufficient certainty that a review of an**
- 23 **agency action under IC 4-21.5 or comparable process can**
- 24 **evaluate whether the amount was reasonable.**
- 25 **A rule concerning fines or civil penalties does not prohibit an**
- 26 **agency to enter into a settlement agreement with a person against**
- 27 **whom a fine or civil penalty is being assessed to determine the fine**
- 28 **or civil penalty to be paid for a violation.**
- 29 **(c) The amount of a fee must be reasonably based on the amount**
- 30 **necessary to carry out the purposes for which the fee is imposed.**
- 31 **(d) An agency setting a fine or civil penalty shall consider the**
- 32 **following:**
- 33 **(1) Whether the violation has a major or minor impact on the**
- 34 **health, safety, or welfare of a person, the health or safety of**
- 35 **animals or natural resources, or other facts set forth in the**
- 36 **agency's rule.**
- 37 **(2) The number of previous violations committed by the**
- 38 **offender of laws, rules, or programs administered by the**
- 39 **agency.**
- 40 **(3) The need for deterrence of future violations.**

1 **(4) Whether the conduct, if proved beyond a reasonable**
 2 **doubt, would constitute a criminal offense, and the level of**
 3 **penalty set by law for the criminal offense.**

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

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

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

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

11 **(B) reviewed by the budget committee:**

12 **(i) in the case of the department of environmental**
 13 **management, the boards listed in IC 13-14-9-1, the office**
 14 **of environmental adjudication, the natural resources**
 15 **commission, the department of natural resources, the**
 16 **Indiana gaming commission, and the Indiana horse**
 17 **racing commission, before December 31, 2023; and**

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

20 **(C) included in a rule that complies with this section and**
 21 **becomes effective before:**

22 **(i) in the case of the department of environmental**
 23 **management, the boards listed in IC 13-14-9-1, the office**
 24 **of environmental adjudication, the natural resources**
 25 **commission, the department of natural resources, the**
 26 **Indiana gaming commission, and the Indiana horse**
 27 **racing commission, December 31, 2024; and**

28 **(ii) in the case of an agency not described in item (i), July**
 29 **1, 2025; or**

30 **(3) the agency withdraws or otherwise ceases to enforce or**
 31 **apply the fee, fine, or civil penalty before:**

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

38 **(B) in the case of an agency not described in item (i), July**
 39 **1, 2024.**

40 **Readoption without changes under IC 4-22-2.6 of a nonconforming**

1 fee, fine, or civil penalty that meets the requirements of subdivision
 2 (1) or (2) does not invalidate the nonconforming fee, fine, or civil
 3 penalty.

4 (f) Beginning January 1, 2024, an agency shall post on its
 5 website a schedule of fines and civil penalties that apply to
 6 violations of laws, rules, and requirements of federal programs
 7 administered by the agency."

8 Page 7, line 28, strike "24" and insert "23".

9 Page 7, line 29, delete "or 37.3".

10 Page 7, line 29, delete "and".

11 Page 7, between lines 29 and 30, begin a new line block indented
 12 and insert:

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

14 Page 7, line 30, delete "(2)" and insert "(3)".

15 Page 7, line 35, delete "23, 37.2, or 37.3" and insert "23 or 37.2".

16 Page 8, line 31, delete "rule. The regulatory analysis must" and
 17 insert **"rule that complies with the requirements of this section."**

18 Page 8, delete lines 32 through 42.

19 Page 9, delete lines 1 through 5.

20 Page 9, line 16, after "budget." begin a new paragraph and insert:

21 **"(c)".**

22 Page 9, delete lines 20 through 42, begin a new line block indented
 23 and insert:

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

25 **(2) Each of the standards in sections 19.5 and (if applicable)**
 26 **19.6 of this chapter.**

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

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

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

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

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

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

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

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

- 1 **(B) any other state or federal law.**
- 2 **The statement required under this subsection must include a**
- 3 **reference to any data, studies, or analyses relied upon by the**
- 4 **agency in determining that the imposition of the requirement or**
- 5 **cost is necessary."**
- 6 Page 10, delete lines 1 through 15.
- 7 Page 10, line 16, delete "(c)" and insert "(e)".
- 8 Page 10, line 26, delete "first and second".
- 9 Page 11, line 6, delete "first and second".
- 10 Page 11, line 9, delete "first and second".
- 11 Page 11, line 18, after "this section." insert **"The budget agency**
- 12 **and the office of management and budget may not approve any**
- 13 **part of a proposed rule that adds or amends language to increase**
- 14 **or expand application of a fee, fine, or civil penalty or a schedule**
- 15 **of fees, fines, or civil penalties before submitting the proposed rule**
- 16 **to the budget committee for review."**
- 17 Page 11, delete lines 24 through 32, begin a new paragraph and
- 18 insert:
- 19 **"(e) If an agency revises a proposed rule after the budget agency**
- 20 **and the office of management and budget authorize**
- 21 **commencement of the public comment periods, the agency must**
- 22 **obtain a new notice of determination under subsection (d). The**
- 23 **agency shall resubmit to the budget agency and the office of**
- 24 **management and budget the revised proposed rule and a revised**
- 25 **regulatory analysis with sufficient information for the budget**
- 26 **agency and the office of management and budget to determine the**
- 27 **impact the revisions have on the regulatory analysis previously**
- 28 **reviewed by the budget agency and the office of management and**
- 29 **budget. After obtaining a new notice of determination, the agency**
- 30 **shall submit to the publisher the new notice of determination, the**
- 31 **revised proposed rule, and the revised regulatory analysis."**
- 32 Page 11, line 35, strike "(a)".
- 33 Page 11, line 36, delete "An agency may not adopt a proposed".
- 34 Page 11, delete lines 37 through 38.
- 35 Page 11, line 39, strike "(b)" and insert "(a)".
- 36 Page 12, line 2, delete "subsection (a)." and insert **"this section."**
- 37 Page 12, delete lines 5 through 9, begin a new line block indented
- 38 and insert:
- 39 **"(1) A statement of the date, time, and place at which the**
- 40 **hearing required by section 26 of this chapter will be**

1 **convened, including information for how to attend the public**
 2 **hearing remotely.**

3 **(2) The full text of the agency's proposed rule in the form**
 4 **required by section 20 of this chapter and the documents**
 5 **required by section 21 of this chapter."**

6 Page 12, line 10, delete "(2)" and insert "(3)".

7 Page 12, line 13, delete "(3)" and insert "(4)".

8 Page 12, line 15, delete "first and second public comment periods
 9 on the proposed rule." and insert "**public comment periods.**

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

15 Page 12, line 16, delete "(4)" and insert "(6)".

16 Page 12, line 16, delete "(c)." and insert "(b)."

17 Page 12, line 17, delete "(c)" and insert "(b)".

18 Page 12, delete lines 38 through 40, begin a new line block indented
 19 and insert:

20 **"(7) An indication that, if the agency does not receive any**
 21 **substantive comments during the comment period or public**
 22 **hearing, the agency may adopt a rule that is the same as or**
 23 **does not substantially differ from the text of the proposed rule**
 24 **published under this section."**

25 Page 13, between lines 15 and 16, begin a new paragraph and insert:

26 **"(c) Although the agency may comply with the publication**
 27 **requirements of this section on different days, the agency must**
 28 **comply with all of the publication requirements of this section at**
 29 **least thirty (30) days before the public hearing required by section**
 30 **26 of this chapter is convened."**

31 Page 13, line 25, delete "." and insert ", **including any information**
 32 **required under IC 13-14-9-4 (if applicable)."**

33 Page 13, line 31, strike "(a) This section and section 19(b) of this".

34 Page 13, strike line 32.

35 Page 13, line 33, strike "(b)".

36 Page 13, after line 42, begin a new paragraph and insert:

37 **"SECTION 16. IC 4-22-2-24, AS AMENDED BY P.L.1-2006,**
 38 **SECTION 71, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE**
 39 **JULY 1, 2023]: Sec. 24. (a) An agency shall notify the public of its**
 40 **intention to adopt a rule by complying with the publication**

1 requirements in subsections (b) and (e):

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

9 (a) If:

10 (1) an agency receives substantive comments during the first
11 comment period or the public hearing under section 23 of this
12 chapter; or

13 (2) the rule establishes a requirement or limitation that is
14 more stringent than an applicable federal requirement or
15 limitation;

16 the agency must conduct a second comment period under this
17 section.

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

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

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

34 (d) (c) The agency shall include the following in the **second**
35 **comment period notice required by subsections (b) and (e): published**
36 **in the Indiana Register:**

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

- 1 Delete page 14.
- 2 Page 15, delete lines 1 through 26.
- 3 Page 16, line 42, strike "(e)" and insert "(d)".
- 4 Page 17, delete lines 7 through 22, begin a new paragraph and
- 5 insert:
- 6 "~~(g)~~ (e) The publisher shall review materials submitted under this
- 7 section and determine the date that the publisher intends to include the
- 8 material in the Indiana Register. ~~After:~~
- 9 ~~(1) establishing the intended publication date; and~~
- 10 ~~(2) receiving the public hearing information specified in~~
- 11 ~~subsection (d) from the agency;~~
- 12 **the publisher shall If the submitted material complies with this**
- 13 **section, the publisher shall establish the intended publication date,**
- 14 **assign a document control number to the proposed rule, and**
- 15 **provide a written or an electronic mail authorization to proceed to the**
- 16 **agency. The publisher shall publish the following in the Indiana**
- 17 **Register on the intended publication date:**
- 18 **(1) The notice of the second comment period, including any**
- 19 **information required under IC 13-14-9-4 (if applicable).**
- 20 **(2) The full text of the agency's proposed rule (excluding the**
- 21 **full text of a matter incorporated by reference under section**
- 22 **21 of this chapter)."**
- 23 Page 18, between lines 9 and 10, begin a new paragraph and insert:
- 24 "SECTION 20. IC 4-22-2-26 IS AMENDED TO READ AS
- 25 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 26. (a) After the notices
- 26 and the text of an agency's proposed rule are published under ~~section~~
- 27 **sections 23 and (if applicable) 24** of this chapter, the agency shall
- 28 conduct a public hearing on the proposed rule.
- 29 (b) The agency shall convene the public hearing on the date and at
- 30 the time and place stated in its notices **and include an option for**
- 31 **remote attendance.**
- 32 (c) The agency may conduct the public hearing in any informal
- 33 manner that allows for an orderly presentation of comments and avoids
- 34 undue repetition. However, the agency shall afford any person
- 35 attending the public hearing an adequate opportunity to comment on
- 36 the agency's proposed rule through the presentation of oral and written
- 37 facts or argument.
- 38 (d) The agency may recess the public hearing and reconvene it on
- 39 a different date or at a different time or place by:
- 40 (1) announcing the date, time, and place of the reconvened public

1 hearing in the original public hearing before its recess; and
 2 (2) recording the announcement in the agency's record of the
 3 public hearing.

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

6 Page 18, line 13, delete "written".

7 Page 18, line 15, strike "hearing" and insert "**hearings**".

8 Page 18, line 15, strike "section" and insert "**sections 23, 24, and**".

9 Page 21, delete lines 41 through 42, begin a new paragraph and
 10 insert:

11 "SECTION 21. IC 4-22-2-28.1, AS AMENDED BY P.L.237-2017,
 12 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2023]: Sec. 28.1. ~~(a) This section applies to the following:~~

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

17 ~~(2) A rule for which:~~

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

19 ~~(B) an appropriate later notice for circumstances described in~~
 20 ~~subsection (g);~~

21 ~~is published by the department of environmental management~~
 22 ~~after June 30, 2006.~~

23 ~~(b) (a) As used in this section, The following definitions apply~~
 24 ~~throughout this section:~~

25 ~~(1) "Coordinator" refers to the small business regulatory~~
 26 ~~coordinator assigned to a rule by an agency under subsection (e):~~

27 ~~(b).~~

28 ~~(c) As used in this section, (2) "Director" refers to the director or~~
 29 ~~other administrative head of an agency.~~

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

32 ~~(e) (b) For each rulemaking action and rule finally adopted as a~~
 33 ~~result of a rulemaking action by an agency, under this chapter, the~~
 34 ~~agency shall assign one (1) staff person to serve as the agency's small~~
 35 ~~business regulatory coordinator with respect to the proposed or adopted~~
 36 ~~rule. The agency shall assign a staff person to a rule under this~~
 37 ~~subsection based on the person's knowledge of, or experience with, the~~
 38 ~~subject matter of the rule. A staff person may serve as the coordinator~~
 39 ~~for more than one (1) rule proposed or adopted by the agency if the~~
 40 ~~person is qualified by knowledge or experience with respect to each~~

1 rule. Subject to subsection (f):
 2 (1) in the case of a proposed rule, the notice of intent to adopt the
 3 **rule The first comment period notice** published under section 23
 4 of this chapter or
 5 (2) in the case of a rule proposed by the department of
 6 environmental management or the board (as defined in
 7 IC 13-13-8-1), the notice published under IC 13-14-9-3 or the
 8 findings published under IC 13-14-9-8(b)(1); whichever applies;
 9 must include the name, address, telephone number, and electronic mail
 10 address of the small business coordinator for the proposed rule, the
 11 name, address, telephone number, and electronic mail address of the
 12 small business ombudsman designated under IC 5-28-17-6, and a
 13 statement of the resources available to regulated entities through the
 14 small business ombudsman designated under IC 5-28-17-6. ~~Subject to~~
 15 ~~subsection (f)~~; In the case of a rule finally adopted, the final rule, as
 16 published in the Indiana Register, must include the name, address,
 17 telephone number, and electronic mail address of the coordinator.
 18 (f) (c) This subsection applies to a rule adopted by the department
 19 of environmental management or the board (as defined in
 20 IC 13-13-8-1) under IC 13-14-9. ~~Subject to subsection (g)~~; **listed in**
 21 **IC 13-14-9-1. In addition to the information required by subsection**
 22 **(b)**, the department **and a board** shall include in the notice provided
 23 under IC 13-14-9-3 or in the findings published under
 24 IC 13-14-9-8(b)(1); whichever applies; **section 23 of this chapter** and
 25 in the publication of the final rule in the Indiana Register:
 26 (1) a statement of the resources available to regulated entities
 27 through the technical and compliance assistance program
 28 established under IC 13-28-3;
 29 (2) the name, address, telephone number, and electronic mail
 30 address of the ombudsman designated under IC 13-28-3-2;
 31 (3) if applicable, a statement of:
 32 (A) the resources available to small businesses through the
 33 small business stationary source technical assistance program
 34 established under IC 13-28-5; and
 35 (B) the name, address, telephone number, and electronic mail
 36 address of the ombudsman for small business designated under
 37 IC 13-28-5-2(3). ~~and~~
 38 (4) ~~the information required by subsection (e)~~;
 39 The coordinator assigned to the rule ~~under subsection (e)~~ shall work
 40 with the ombudsman described in subdivision (2) and the office of

1 voluntary compliance established by IC 13-28-1-1 to coordinate the
 2 provision of services required under subsection (h) and IC 13-28-3. If
 3 applicable, the coordinator assigned to the rule ~~under subsection (e)~~
 4 shall work with the ombudsman referred to in subdivision (3)(B) to
 5 coordinate the provision of services required under ~~subsection (h)~~ **this**
 6 **section** and IC 13-28-5.

7 ~~(g)~~ If the notice provided under IC ~~13-14-9-3~~ is not published as
 8 allowed by IC ~~13-14-9-7~~, the department of environmental
 9 management shall publish in the notice provided under IC ~~13-14-9-4~~
 10 the information that subsection (f) would otherwise require to be
 11 published in the notice under IC ~~13-14-9-3~~. If neither the notice under
 12 IC ~~13-14-9-3~~ nor the notice under IC ~~13-14-9-4~~ is published as allowed
 13 by IC ~~13-14-9-8~~, the department of environmental management shall
 14 publish in the commissioner's written findings under IC ~~13-14-9-8(b)~~
 15 the information that subsection (f) would otherwise require to be
 16 published in the notice under IC ~~13-14-9-3~~.

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

- 21 (1) Any requirements imposed by the rule, including any
- 22 reporting, record keeping, or accounting requirements.
- 23 (2) How the agency determines or measures compliance with the
- 24 rule, including any deadlines for action by regulated entities.
- 25 (3) Any penalties, sanctions, or fines imposed for noncompliance
- 26 with the rule.
- 27 (4) Any other concerns of small businesses with respect to the
- 28 rule, including the agency's application or enforcement of the rule
- 29 in particular situations. However, in the case of a rule adopted
- 30 ~~under IC 13-14-9~~, **by the department of environmental**
- 31 **management or a board listed in IC 13-14-9-1**, the coordinator
- 32 assigned to the rule may refer a small business with concerns
- 33 about the application or enforcement of the rule in a particular
- 34 situation to the ombudsman designated under IC 13-28-3-2 or, if
- 35 applicable, under IC 13-28-5-2(3).

36 ~~(i)~~ **(e)** The coordinator assigned to a rule ~~under subsection (e)~~ shall
 37 provide guidance under this section in response to questions and
 38 concerns expressed by small businesses affected by the rule. The
 39 coordinator may also issue general guidelines or informational
 40 pamphlets to assist small businesses in complying with the rule. Any

1 guidelines or informational pamphlets issued under this subsection
2 shall be made available:

- 3 (1) for public inspection and copying at the offices of the agency
4 under IC 5-14-3; and
- 5 (2) electronically through electronic gateway access.

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

- 11 (1) not later than ten (10) days after the date on which the rule is
12 submitted to the publisher under section 35 of this chapter; and
- 13 (2) before July 15 of each year during which the rule remains in
14 effect.

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

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

- 19 (1) compile the records received from all of the agency's
20 coordinators under subsection ~~(j)~~; **(f)**;
- 21 (2) prepare a report that sets forth:
 - 22 (A) the number of comments, complaints, and questions
23 received by the agency from small businesses during the most
24 recent state fiscal year, categorized by the subject matter of the
25 rules involved;
 - 26 (B) the number of complaints or questions reported under
27 clause (A) that were resolved to the satisfaction of the agency
28 and the small businesses involved;
 - 29 (C) the total number of staff serving as coordinators under this
30 section during the most recent state fiscal year;
 - 31 (D) the agency's costs in complying with this section during
32 the most recent state fiscal year; and
 - 33 (E) the projected budget required by the agency to comply
34 with this section during the current state fiscal year; and
- 35 (3) deliver the report to the legislative council in an electronic
36 format under IC 5-14-6 and to the small business ombudsman
37 designated under IC 5-28-17-6.

38 SECTION 43. IC 4-22-2-28.2, AS AMENDED BY P.L.133-2012,
39 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
40 JULY 1, 2023]: Sec. 28.2. (a) This section applies to a violation

1 described in subsection (c) that occurs after June 30, 2005. However,
2 in the case of a violation of a rule adopted under IC 13-14-9 by the
3 department of environmental management or the board (as defined in
4 IC 13-13-8-1), the procedures set forth in IC 13-30-4-3 and IC 13-30-7
5 apply instead of this section.

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

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

13 (1) Provides written notice of the violation to the agency not later
14 than forty-five (45) days after the small business knew or should
15 have known that the violation occurred.

16 (2) Corrects the violation within a time agreed to by the agency
17 and the small business. However, the small business shall be
18 given at least ninety (90) days after the date of the notice
19 described in subdivision (1) to correct the violation. The small
20 business may correct the violation at any time before the
21 expiration of the period agreed to under this subdivision.

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

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

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

29 (2) The violation resulted in a substantial economic benefit that
30 afforded the small business a clear advantage over the small
31 business's competitors.

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

34 (e) Information that a small business provides under this section,
35 including actions and documents that identify or describe the small
36 business, to an agency in providing notice of the small business's actual
37 or potential violation of a rule adopted by the agency is confidential,
38 unless a clear and immediate danger to the public health, safety, or
39 welfare or to the environment exists. Information described in this
40 subsection may not be made available for use by the agency for

1 purposes other than the purposes of this section without the consent of
2 the small business.

3 (f) Voluntary notice of an actual or a potential violation of a rule
4 that is provided by a small business under subsection (c) is not
5 admissible as evidence in a proceeding, other than an agency
6 proceeding, to prove liability for the rule violation or the effects of the
7 rule violation.

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

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

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

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

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

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

30 (c) **Subject to IC 13-14-9-4.5 (if applicable)**, an agency may not
31 adopt a rule that substantially differs from the version or versions of the
32 proposed rule or rules published in the Indiana Register under section
33 **23 or 24** of this chapter, **or IC 13-14-9-14 (as applicable)**, unless it is
34 a logical outgrowth of any proposed rule as supported by any written
35 **and public hearing** comments submitted:

36 (1) during the public comment period; or

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

39 Delete pages 22 through 25.

40 Page 26, delete line 1.

1 Page 26, line 5, strike "with IC 13-14-9-9(1) or IC 13-14-9-9(2),"
2 and insert "**adopted the rule in conformity with IC 13-14-9**,"

3 Page 26, line 12, delete "23(d) and 24(f)" and insert "**23 and 24**".

4 Page 26, line 12, delete "chapter." and insert "chapter **or**
5 **IC 13-14-9-4, IC 13-14-9-5, or IC 13-14-9-14, as applicable**."

6 Page 26, between lines 18 and 19, begin a new paragraph and insert:
7 "SECTION 24. IC 4-22-2-32, AS AMENDED BY P.L.1-2006,
8 SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2023]: Sec. 32. (a) The attorney general shall review each rule
10 submitted under section 31 of this chapter for legality.

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

15 (1) The extent to which all persons affected by the adopted rule
16 should have understood from the published rule or rules that their
17 interests would be affected.

18 (2) The extent to which the subject matter of the adopted rule or
19 the issues determined in the adopted rule are different from the
20 subject matter or issues that were involved in the published rule
21 or rules.

22 (3) The extent to which the effects of the adopted rule differ from
23 the effects that would have occurred if the published rule or rules
24 had been adopted instead.

25 In the review, the attorney general shall consider whether the adopted
26 rule may constitute the taking of property without just compensation to
27 an owner.

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

30 (1) has been adopted without statutory authority;

31 (2) has been adopted without complying with this chapter;

32 (3) does not comply with requirements under section 29 of this
33 chapter; or

34 (4) violates another law.

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

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

40 (1) disapprove the rule; or

- 1 (2) return the rule to the agency without disapproving the rule.
- 2 (e) If the attorney general returns a rule under subsection (d)(2), the
3 agency may bring the rule into compliance with section 20(a)(2) of this
4 chapter and resubmit the rule to the attorney general without readopting
5 the rule.
- 6 (f) If the attorney general determines in the course of the review
7 conducted under subsection (b) that a rule may constitute a taking of
8 property, the attorney general shall advise the following:
- 9 (1) The governor.
- 10 (2) The agency head.
- 11 Advice given under this subsection shall be regarded as confidential
12 attorney-client communication.
- 13 (g) The attorney general has forty-five (45) days from the date that
14 an agency:
- 15 (1) submits a rule under section 31 of this chapter; or
16 (2) resubmits a rule under subsection (e);
17 to approve or disapprove the rule. If the attorney general neither
18 approves nor disapproves the rule, the rule is deemed approved, and the
19 agency may submit it to the governor for approval under section 33 of
20 this chapter without the approval of the attorney general.
- 21 (h) For rules adopted under IC 13-14-9, the attorney general:
- 22 (1) shall determine whether the rule adopted by the agency under
23 ~~IC 13-14-9-9(2)~~ **is a IC 13-14-9 meets the appropriate**
24 **substantial similarity or** logical outgrowth ~~of the proposed rule~~
25 ~~as published under IC 13-14-9-5(a)(2) and of testimony presented~~
26 ~~at the board meeting held under IC 13-14-9-5(a)(3);~~ **standard**
27 **under section 29(c) of this chapter;** and
- 28 (2) may disapprove a rule under this section only if the rule:
- 29 (A) has been adopted without statutory authority;
30 (B) has been adopted without complying with this chapter or
31 IC 13-14-9;
32 (C) ~~is not a logical outgrowth of the proposed rule as~~
33 ~~published under IC 13-14-9-5(a)(2) and of the testimony~~
34 ~~presented at the board meeting held under IC 13-14-9-5(a)(3);~~
35 **meets the appropriate substantial similarity or logical**
36 **outgrowth standard under section 29(c) of this chapter;** or
37 (D) violates another law."
- 38 Page 26, line 27, delete "emergency" and insert "**provisional**".
- 39 Page 26, line 30, delete "emergency rule" and insert "**rule by the**
40 **name of emergency rule or provisional rule**".

- 1 Page 26, line 42, delete "emergency" and insert "**provisional**".
- 2 Page 27, line 6, delete "or".
- 3 Page 27, line 8, delete "program." and insert "**program;**
- 4 **(5) injury to the business or interests of the people or any**
- 5 **public utility of Indiana as determined under IC 8-1-2-113;**
- 6 **(6) an imminent and substantial peril to:**
- 7 **(A) wildlife; or**
- 8 **(B) domestic animal;**
- 9 **health, safety, or welfare; or**
- 10 **(7) the spread of invasive species, pests, or diseases affecting**
- 11 **plants."**
- 12 Page 27, line 10, delete "emergency" and insert "**provisional**".
- 13 Page 27, line 11, delete "emergency" and insert "**provisional**".
- 14 Page 27, line 13, after "governor." insert "**The governor may not**
- 15 **approve provisional rulemaking for any part of a proposed**
- 16 **provisional rule that adds or amends language to increase or**
- 17 **expand application of a fee, fine, or civil penalty or a schedule of**
- 18 **fees, fines, or civil penalties before submitting the proposal to the**
- 19 **budget committee for review."**
- 20 Page 27, line 20, delete "emergency" and insert "**provisional**".
- 21 Page 27, line 20, delete "rule," and insert "**rule but before the**
- 22 **agency adopts the provisional rule,"**
- 23 Page 27, line 27, after "number." insert "**The agency must submit**
- 24 **at least the following:**
- 25 **(1) The full text of the proposed provisional rule in the form**
- 26 **required by section 20 of this chapter.**
- 27 **(2) A statement justifying the need for provisional**
- 28 **rulemaking.**
- 29 **(3) The approval of the governor to use provisional**
- 30 **rulemaking procedures required by law.**
- 31 **(4) The documents required by section 21 of this chapter.**
- 32 **An agency may not adopt a proposed provisional rule until after**
- 33 **the publisher notifies the agency that the publisher has complied**
- 34 **with subsection (d). At least ten (10) regular business days must**
- 35 **elapse after the publisher has complied with subsection (d) before**
- 36 **the department of natural resources, the natural resources**
- 37 **commission, the department of environmental management, or a**
- 38 **board that has rulemaking authority under IC 13 adopts a**
- 39 **provisional rule.**
- 40 **(d) Upon receipt of documents described in subsection (c), the**

1 publisher shall distribute the full text of the proposed provisional
 2 rule to legislators and legislative committees in the manner and the
 3 form specified by the legislative council or the personnel
 4 subcommittee of the legislative council acting for the legislative
 5 council. After distribution has occurred, the publisher shall notify
 6 the agency of the date that distribution under this subsection has
 7 occurred."

8 Page 27, line 28, strike "(d)" and insert "(e)".

9 Page 27, line 31, delete "emergency" and insert "**provisional**".

10 Page 27, line 32, delete "emergency" and insert "**provisional**".

11 Page 27, line 35, delete "emergency" and insert "**provisional**".

12 Page 27, delete lines 37 through 38, begin a new line block indented
 13 and insert:

14 **"(3) If the provisional rule adds or amends language to**
 15 **increase or expand application of a fee, fine, or civil penalty**
 16 **or a schedule of fees, fines, or civil penalties, the agenda of the**
 17 **budget committee meeting at which the rule was scheduled for**
 18 **review."**

19 Page 27, line 40, delete "emergency" and insert "**provisional**".

20 Page 27, line 42, delete "emergency" and insert "**provisional**".

21 Page 28, line 1, delete "emergency" and insert "**provisional**".

22 Page 28, line 2, delete "An emergency" and insert "**A provisional**".

23 Page 28, line 5, strike "(e)" and insert "(f)".

24 Page 28, line 5, delete "subsection (d)" and insert "**subsections (c)**
 25 **and (e)**".

26 Page 28, line 10, delete "emergency" and insert "**provisional**".

27 Page 28, line 12, strike "(f)" and insert "(g)".

28 Page 28, line 12, delete "A An emergency" and insert "**A**
 29 **provisional**".

30 Page 28, line 15, delete "emergency" and insert "**provisional**".

31 Page 28, line 16, delete "emergency" and insert "**provisional**".

32 Page 28, line 17, strike "(e)." and insert "(f)".

33 Page 28, line 19, delete "emergency" and insert "**provisional**".

34 Page 28, line 22, delete "emergency" and insert "**provisional**".

35 Page 28, line 23, strike "an emergency" and insert "**a provisional**".

36 Page 28, line 37, delete "(g)" and insert "(h)".

37 Page 28, line 37, delete "an emergency" and insert "**a provisional**".

38 Page 28, line 38, delete "emergency" and insert "**provisional**".

39 Page 28, line 39, delete "emergency" and insert "**provisional**".

- 1 Page 28, line 40, delete "an emergency" and insert "**a provisional**".
- 2 Page 28, line 40, after "of" delete "an" and insert "**a provisional**".
- 3 Page 28, line 41, delete "emergency rule by another emergency" and
- 4 insert "**rule by another provisional**".
- 5 Page 28, line 42, delete "emergency" and insert "**provisional**".
- 6 Page 29, line 1, delete "(e)." and insert "**(f)**".
- 7 Page 29, line 2, delete "emergency rule, including" and insert
- 8 "**provisional rule, including**".
- 9 Page 29, line 2, after "the" delete "emergency" and insert
- 10 "**provisional**".
- 11 Page 29, line 4, delete "emergency" and insert "**circumstance**".
- 12 Page 29, line 6, delete "emergency" and insert "**provisional**".
- 13 Page 29, line 13, delete "(h)" and insert "**(i)**".
- 14 Page 29, line 13, after "subsection" delete "(i)," and insert "**(j)**".
- 15 Page 29, line 14, delete "an emergency" and insert "**a provisional**".
- 16 Page 29, line 16, after "that" delete "an emergency" and insert "**a**
- 17 **provisional**".
- 18 Page 29, line 16, after "to" delete "an emergency" and insert "**a**
- 19 **provisional**".
- 20 Page 29, line 17, delete "(e)." and insert "**(f)**".
- 21 Page 29, line 18, delete "emergency" and insert "**provisional**".
- 22 Page 29, line 20, delete "emergency" and insert "**provisional**".
- 23 Page 29, line 21, delete "an emergency" and insert "**a provisional**".
- 24 Page 29, line 23, delete "(i)" and insert "**(j)**".
- 25 Page 29, line 23, delete "an" and insert "**a provisional**".
- 26 Page 29, line 24, delete "emergency".
- 27 Page 29, line 24, delete "(h)" and insert "**(i)**".
- 28 Page 29, line 25, delete "emergency" and insert "**provisional**".
- 29 Page 29, line 28, delete "an emergency" and insert "**a provisional**".
- 30 Page 30, line 5, after "may" insert "**only**".
- 31 Page 30, line 6, delete "with a single comment period of".
- 32 Page 30, line 7, delete "at least thirty (30) days in length".
- 33 Page 30, line 17, delete "or".
- 34 Page 30, line 18, delete "new".
- 35 Page 30, line 23, after "organization;" insert "**or**
- 36 **(3) a category of rule authorized under IC 4-22-2.3 to be**
- 37 **adopted as an interim rule;**".
- 38 Page 30, line 25, after "effect." begin a new paragraph and insert:
- 39 "**(c)**".

1 Page 30, line 30, after "governor." insert "**The governor may not**
 2 **approve interim rulemaking for any part of a proposed interim**
 3 **rule that adds or amends language to increase or expand**
 4 **application of a fee, fine, or civil penalty or a schedule of fees, fines,**
 5 **or civil penalties before submitting the proposal to the budget**
 6 **committee for review.**".

7 Page 30, delete lines 36 through 42, begin a new paragraph and
 8 insert:

9 "**(d) To publish a notice of interim rulemaking in the Indiana**
 10 **Register, the agency must submit the following to the publisher:**

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

13 **(2) The approval of the governor to use interim rulemaking**
 14 **procedures for the rule.**

15 **(3) If the interim rule adds or amends language to increase or**
 16 **expand application of a fee, fine, or civil penalty or a schedule**
 17 **of fees, fines, or civil penalties, the agenda of the budget**
 18 **committee meeting at which the rule was scheduled for**
 19 **review.**

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

21 **The publisher shall review materials submitted under this".**

22 Page 31, line 3, delete "date and receiving the public comment
 23 period" and insert "**date,**".

24 Page 31, line 4, delete "information from the agency,".

25 Page 31, line 6, delete "(d)" and insert "(e)".

26 Page 31, between lines 9 and 10, begin a new line block indented
 27 and insert:

28 "**(2) The full text of the agency's proposed interim rule in the**
 29 **form required by section 20 of this chapter (excluding the text**
 30 **of a matter incorporated by reference under section 21 of this**
 31 **chapter).**".

32 Page 31, line 10, delete "(2)" and insert "(3)".

33 Page 31, line 18, delete "necessary and where and how a person may
 34 inspect" and insert "**necessary.**

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

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

- 1 Page 31, delete lines 19 through 20.
- 2 Page 31, line 21, delete "(3)" and insert "**(6)**".
- 3 Page 31, line 24, delete "expedited" and insert "**interim**".
- 4 Page 31, line 29, delete "(2)" and insert "**(3)**".
- 5 Page 31, line 33, delete "(e)" and insert "**(f)**".
- 6 Page 31, line 36, delete "(f)" and insert "**(g)**".
- 7 Page 31, line 36, delete "initial".
- 8 Page 31, line 37, delete "of at least thirty (30) days in length".
- 9 Page 31, line 38, delete "(e)," and insert "**(f)**".
- 10 Page 32, line 7, delete "(g)" and insert "**(h)**".
- 11 Page 32, line 10, after "submit the" insert "**full text of the**".
- 12 Page 32, delete lines 18 through 19.
- 13 Page 32, line 20, delete "(5)" and insert "**(4)**".
- 14 Page 32, line 25, delete "(h)" and insert "**(i)**".
- 15 Page 32, line 25, after "subsection" delete "(g)" and insert "**(h)**".
- 16 Page 32, line 32, delete "(i)" and insert "**(j)**".
- 17 Page 32, line 37, delete "(h)." and insert "**(i)**".
- 18 Page 33, line 3, delete "(j)" and insert "**(k)**".
- 19 Page 33, line 5, delete "An" and insert "**Except as provided in**
- 20 **IC 4-22-2.3, an**".
- 21 Page 33, line 6, delete "or 37.3".
- 22 Page 33, line 8, after "subsection" insert "**(i)**".
- 23 Page 33, delete lines 9 through 13.
- 24 Page 33, line 14, delete "(k)" and insert "**(l)**".
- 25 Page 33, line 14, after "subsection" delete "(l)," and insert "**(m)**".
- 26 Page 33, line 18, delete "(h)." and insert "**(i)**".
- 27 Page 33, line 24, delete "(l)" and insert "**(m)**".
- 28 Page 33, line 25, delete "(k)" and insert "**(l)**".
- 29 Page 33, delete lines 33 through 42.
- 30 Delete pages 34 through 36.
- 31 Page 37, delete lines 1 through 5.
- 32 Page 37, line 22, delete "37.3" and insert "**37.2**".
- 33 Page 38, line 19, delete "37.3,".
- 34 Page 39, line 9, delete "37.3,".
- 35 Page 39, line 16, delete "Sections 24" and insert "**IC 13-14-9 and**
- 36 **sections ~~24~~ 23**".
- 37 Page 39, line 19, delete "Sections 24" and insert "**IC 13-14-9 and**
- 38 **sections ~~24~~ 23**".
- 39 Page 39, line 23, delete "sections 24" and insert "**IC 13-14-9 or**

1 sections ~~24~~ **23**".

2 Page 39, line 25, delete "chapter." and insert "chapter **or**
3 **IC 13-14-9-9 (as applicable)**".

4 Page 40, line 9, delete "37.3,".

5 Page 40, line 14, delete "37.3,".

6 Page 40, line 16, delete "Sections 24" and insert "**IC 13-14-9 and**
7 sections ~~24~~ **23**".

8 Page 43, line 4, delete "readopted" and insert "**adopted**".

9 Page 43, line 28, delete "an emergency" and insert "**a provisional**".

10 Page 43, line 30, delete "emergency" and insert "**provisional**".

11 Page 43, line 31, delete "expedited" and insert "**interim**".

12 Page 43, line 31, delete "IC 4-22-2-37.3" and insert "**IC**
13 **4-22-2-37.2**".

14 Page 43, line 32, delete "emergency" and insert "**provisional**".

15 Page 43, line 33, delete "emergency" and insert "**provisional**".

16 Page 43, line 35, delete "June 30 of the year following the year in
17 which the rule" and insert "**one (1) year after the date on which the**
18 **rules are published in the Indiana Register**".

19 Page 43, delete lines 36 through 42, begin a new paragraph and
20 insert:

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

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

36 **Sec. 5. The department of natural resources (or to the extent**
37 **permitted by IC 14-10-2, the natural resources commission) may**
38 **adopt interim rules under the interim rule procedures in**
39 **IC 4-22-2-37.2 to carry out the duties of the department of natural**
40 **resources under a law listed in IC 14-10-2-5. A rule described in**

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

7 Sec. 6. The following apply to the department of financial
 8 institutions:

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

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

16 (B) promptly after the changes occur, changes in the Index
 17 required by IC 24-4.5-1-106(3), including, when applicable,
 18 the numerical equivalent of the Reference Base Index
 19 under a revised Reference Base Index and the designation
 20 or title of any index superseding the Index;

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

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

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

28 (2) The department of financial institutions may adopt a rule
 29 under the interim rule procedures in IC 4-22-2-37.2 for a rule
 30 permitted under IC 24-4.4-1-101 (licensing system for
 31 creditors and mortgage loan originators) or IC 24-4.5
 32 (Uniform Consumer Credit Code) if the department of
 33 financial institutions declares an emergency. The rule
 34 described in this subdivision expires not later than two (2)
 35 years after the rule is effective.

36 (3) The department of financial institutions may adopt a rule
 37 described in IC 34-55-10-2 (bankruptcy exemptions;
 38 limitations) or IC 34-55-10-2.5 in conformity with the
 39 procedures in IC 4-22-2-23 through IC 4-22-2-36 or the
 40 interim rule procedures in IC 4-22-2-37.2. A rule described in

1 **this subdivision adopted under IC 4-22-2-37.2 expires not**
 2 **later than two (2) years after the rule is accepted for filing by**
 3 **the publisher of the Indiana Register.**

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

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

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

- 19 **(1) has been scheduled or emergency scheduled by the United**
 20 **States Drug Enforcement Administration;**
 21 **(2) has been scheduled, emergency scheduled, or criminalized**
 22 **by another state; or**
 23 **(3) has:**
 24 **(A) a high potential for abuse; and**
 25 **(B) no accepted medical use in treatment in the United**
 26 **States or lacks accepted safety for use in treatment under**
 27 **medical supervision.**

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

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

- 40 **(1) the pesticide has been classified as a restricted use**

1 pesticide or a pesticide for use by prescription only by the
 2 United States Environmental Protection Agency; and
 3 (2) adoption of the interim rule is necessary to prevent an
 4 undue and immediate hazard to persons, animals, wildlife,
 5 lands, or water, other than the pests that the pesticide is
 6 intended to prevent, destroy, control, or mitigate.

7 A rule described in this section expires not later than sixty (60)
 8 days after adjournment sine die of the regular session of the
 9 general assembly that occurs after the interim rule proceeding is
 10 commenced."

11 Delete pages 44 through 45.

12 Page 46, delete lines 1 through 12.

13 Page 47, line 33, delete "do the following:" and insert "**meet each**
 14 **of the standards in IC 4-22-2-19.5 and (if applicable) the**
 15 **requirements for fees, fines, and civil penalties in IC 4-22-2-19.6.**".

16 Page 47, delete lines 34 through 42.

17 Page 48, delete lines 1 through 5.

18 Page 48, line 9, after "IC 4-3-27-12," insert "**IC 4-22-2-22.7,**
 19 **IC 4-22-2-22.8,**".

20 Page 50, between lines 40 and 41, begin a new paragraph and insert:

21 "SECTION 37. IC 5-14-3.5-2, AS AMENDED BY P.L.87-2022,
 22 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2023]: Sec. 2. (a) The auditor of state, working with the office
 24 of technology established by IC 4-13.1-2-1, or another organization that
 25 is part of a state educational institution, and the office of management
 26 and budget established by IC 4-3-22-3, shall post on the Indiana
 27 transparency ~~internet web site~~ **website** the following data:

28 (1) A listing of state expenditures and fund balances, including
 29 expenditures for contracts, grants, and leases.

30 (2) A listing of state owned real and personal property that has a
 31 value of more than twenty thousand dollars (\$20,000).

32 The ~~web site~~ **website** must be electronically searchable by the public
 33 and must be intuitive to users of the ~~web site:~~ **website.**

34 (b) The data base must include **the following** for each state agency:

35 (1) The amount, date, payer, and payee of expenditures.

36 (2) A listing of state expenditures by:

37 (A) personal services;

38 (B) other operating expenses; or

39 (C) total operating expenses;

40 to reflect how the funds were appropriated in the state budget act.

- 1 (3) A listing of state fund balances.
 2 (4) A listing of property owned by the state. ~~and~~
 3 (5) The information report required under IC 4-12-1-21(c).
 4 **(6) Not more than thirty (30) days after the last state**
 5 **signatory to the contract is obtained, a copy of each contract**
 6 **for a purchase (as defined in IC 5-22-2-24) by a governmental**
 7 **body (as defined in IC 5-22-2-13(1)) under IC 5-22 that are**
 8 **entered into after June 30, 2023. The posted copies must**
 9 **redact trade secrets and other confidential information in the**
 10 **posted contracts. When multiple purchases under a quality**
 11 **purchase agreement or other contract are permitted, posting**
 12 **of the quality purchase agreement or contract meets the**
 13 **requirements of this subdivision.**

14 (c) The data base must include for each state educational institution
 15 a listing of the annual salaries for employees of the state educational
 16 institution.

17 SECTION 38. IC 5-22-10-3, AS AMENDED BY P.L.181-2015,
 18 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2023]: Sec. 3. (a) A purchasing agent shall maintain the
 20 contract records for a special purchase in a separate file.

21 (b) A purchasing agent shall include in the contract file a written
 22 determination of the basis for:

- 23 (1) the special purchase; and
 24 (2) the selection of a particular contractor.

25 (c) Notwithstanding any other law, a governmental body shall
 26 maintain a record listing all contracts made under this chapter for a
 27 minimum of five (5) years. The record must contain the following
 28 information:

- 29 (1) Each contractor's name.
 30 (2) The amount, **price per unit**, and type of each contract.
 31 (3) A description, **purchase price per unit, and total cost each**
 32 **purchase** of the supplies purchased under each contract.

33 (d) The contract records for a special purchase are subject to audit
 34 by the state board of accounts.

35 SECTION 40. IC 5-22-18-4 IS AMENDED TO READ AS
 36 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4. (a) Except as
 37 provided in this section or by another law, contract and purchasing
 38 records are public records subject to public inspection under IC 5-14-3.
 39 **The information described in IC 5-22-10-3(c) are public records**
 40 **subject to public inspection under IC 5-14-3.**

1 (b) A governmental body may establish policies or adopt rules for
 2 the protection of documents submitted to the governmental body in
 3 response to a solicitation.

4 (c) Policies or rules may provide procedures for the following:

5 (1) Protection of offers before opening to prevent disclosure of
 6 contents.

7 (2) Afford unobstructed evaluation of offers and award of
 8 contracts by the purchasing agent after opening.

9 (3) Protection of offers from tampering before and after opening.

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

15 (1) Work with state agencies to permit increased enforcement
 16 flexibility and the ability to grant common sense exemptions for
 17 first time offenders of state rules and policies, including,
 18 notwithstanding any other law, policies for the compromise of
 19 interest and penalties related to a listed tax (as defined in
 20 IC 6-8.1-1-1) and other taxes and fees collected or administered
 21 by a state agency.

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

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

27 (4) Work with state agencies to monitor any outdated, ineffective,
 28 or overly burdensome information requests from state agencies to
 29 small businesses.

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

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

37 (7) Prepare written and electronic information for periodic
 38 distribution to small businesses describing the small business
 39 services provided by coordinators (as defined in
 40 ~~IC 4-22-2-28.1(b))~~ **IC 4-22-2-28.1(a)**) and work with the office

1 of technology established by IC 4-13.1-2-1 to place information
 2 concerning the availability of these services on state Internet web
 3 sites that the small business ombudsman or a state agency
 4 determines are most likely to be visited by small business owners
 5 and managers.

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

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

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

18 Page 52, delete lines 39 through 42, begin a new paragraph and
 19 insert:

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

26 SECTION 40. IC 13-14-9-1, AS AMENDED BY P.L.133-2012,
 27 SECTION 89, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2023]: Sec. 1. (a) Except as provided in ~~sections 8 and section~~
 29 14 of this chapter, this chapter applies to the following:

- 30 (1) The board.
 31 (2) The underground storage tank financial assurance board
 32 established by IC 13-23-11-1.

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

35 SECTION 41. IC 13-14-9-2 IS REPEALED [EFFECTIVE JULY 1,
 36 2023]. ~~Sec. 2: Except as provided in sections 4.5, 7, 8, and 14 of this~~
 37 ~~chapter, a board may not adopt a rule under this chapter until the board~~
 38 ~~has conducted at least two (2) public comment periods, each of which~~
 39 ~~must be at least thirty (30) days in length.~~

40 SECTION 42. IC 13-14-9-3, AS AMENDED BY P.L.100-2006,

1 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2023]: Sec. 3. ~~(a) Except as provided in subsection (b);~~
3 **Before publication of the notice described in IC 4-22-2-23**, the
4 department ~~shall~~ **may** provide notice in the Indiana Register of ~~the first~~
5 **a public comment period required by section 2 of this chapter**.
6 **regarding potential rulemaking**. A notice provided under this section
7 must do the following:

8 (1) Identify the authority under which the proposed rule is to be
9 adopted.

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

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

14 (B) state whether each alternative listed under clause (A)
15 creates:

16 (i) a restriction or requirement more stringent than a
17 restriction or requirement imposed under federal law; or

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

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

22 (D) include any information known to the department about
23 the potential fiscal impact of each alternative under clause (A)
24 that creates:

25 (i) a restriction or requirement more stringent than a
26 restriction or requirement imposed under federal law; or

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

29 and

30 (E) set forth the basis for each alternative listed under clause
31 (A).

32 (3) Describe the relevant statutory or regulatory requirements or
33 restrictions relating to the subject matter of the proposed rule that
34 exist before the adoption of the proposed rule.

35 (4) Request the submission of alternative ways to achieve the
36 purpose of the proposed rule.

37 (5) Request the submission of comments, including suggestions
38 of specific language for the proposed rule.

39 (6) Include a detailed statement of the issue to be addressed by
40 adoption of the proposed rule.

1 (b) This section does not apply to rules adopted under
2 IC 13-18-22-2, IC 13-18-22-3, or IC 13-18-22-4.

3 (c) The notice required under subsection (a) shall be published
4 electronically in the Indiana Register under procedures established by
5 the publisher.

6 SECTION 43. IC 13-14-9-4, AS AMENDED BY P.L.218-2016,
7 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2023]: Sec. 4. (a) The department shall provide notice in the
9 Indiana Register of the second public comment period required by
10 section 2 of this chapter. A notice provided under this section **In**
11 **addition to the requirements of IC 4-22-2-23 and (if applicable)**
12 **IC 4-22-2-24, the notice of public comment submitted by the**
13 **department to the publisher** must do the following:

14 ~~(1)~~ Contain the full text of the proposed rule; to the extent
15 required under IC 4-22-2-24(c).

16 ~~(2)~~ **(1)** Contain a summary of the response of the department to
17 written comments submitted under section 3 of this chapter,
18 **during the first public comment period: if applicable.**

19 ~~(3)~~ **(2)** Request the submission of comments, including
20 suggestions of specific amendments to the language contained in
21 the proposed rule.

22 ~~(4)~~ Contain the full text of the commissioner's written findings
23 under section 7 of this chapter, if applicable.

24 ~~(5)~~ **(3)** Identify each element of the proposed rule that imposes a
25 restriction or requirement on persons to whom the proposed rule
26 applies that:

27 (A) is more stringent than a restriction or requirement imposed
28 under federal law; or

29 (B) applies in a subject area in which federal law does not
30 impose a restriction or requirement.

31 ~~(6)~~ **(4)** With respect to each element identified under subdivision
32 ~~(5)~~, **(3)**, identify:

33 (A) the environmental circumstance or hazard that dictates the
34 imposition of the proposed restriction or requirement to
35 protect human health and the environment;

36 (B) examples in which federal law is inadequate to provide the
37 protection referred to in clause (A); and

38 (C) the:

39 (i) estimated fiscal impact; and

40 (ii) expected benefits;

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

- 1 (2) taking emergency action under IC 13-14-10; or
 2 (3) temporarily:
 3 (A) altering ordinary operating policies or procedures; or
 4 (B) implementing new policies or procedures;
 5 in response to an emergency situation.

6 SECTION 44. IC 13-14-9-4.2, AS AMENDED BY P.L.123-2006,
 7 SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2023]: Sec. 4.2. Not less than fourteen (14) days before the
 9 date of preliminary adoption of a proposed rule by a board, the
 10 department shall make available to the board the ~~fiscal impact~~
 11 **statement latest version of the regulatory analysis** prepared by the
 12 ~~office of management and budget with respect to~~ **for** the proposed rule.
 13 ~~under IC 4-22-2-28(e).~~

14 SECTION 45. IC 13-14-9-4.5 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4.5. (a) Except for a
 16 rule

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

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

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

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

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

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

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

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

31 ~~(1)~~ text;

32 ~~(2)~~ summary; and

33 ~~(3)~~ fiscal analysis;

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

36 ~~(c) The notice of a third public comment period that must be~~
 37 ~~published in the Indiana Register under subsection (b) must request the~~
 38 ~~submission of comments; including suggestions of specific~~
 39 ~~amendments; that concern only the portion of the preliminarily adopted~~
 40 ~~rule that is substantively different from the language contained in the~~

1 proposed rule published in a second notice under section 4 of this
2 chapter:

3 SECTION 46. IC 13-14-9-5, AS AMENDED BY P.L.123-2006,
4 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2023]: Sec. 5. (a) A board may not adopt a rule until all of the
6 following occur:

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

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

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

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

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

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

30 (4) If ~~a third~~ **an additional** public comment period is required
31 under section 4.5 of this chapter, the department publishes notice
32 of the ~~third~~ **additional** public comment period in the Indiana
33 Register.

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

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

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

40 (2) be subject to additional comments under section ~~3~~ **4.5** of

1 this chapter; ~~considering any written finding made by the~~
 2 ~~commissioner under section 7 or 8 of this chapter;~~ or
 3 (3) be reconsidered at a subsequent board meeting in accordance
 4 with IC 4-22-2-26(d).

5 SECTION 47. IC 13-14-9-6, AS AMENDED BY P.L.123-2006,
 6 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2023]: Sec. 6. ~~In addition to the requirements of section 8 of~~
 8 ~~this chapter;~~ The department shall include the following in the written
 9 materials to be considered at the board meetings held under section
 10 5(a)(1) and 5(a)(3) of this chapter:

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

13 (2) The written responses of the department to all comments
 14 received:

15 (A) during the immediately preceding comment period for a
 16 board meeting held under section 5(a)(1) of this chapter;

17 (B) during the immediately preceding board meeting under
 18 section 5(a)(1) of this chapter for a board meeting held under
 19 section 5(a)(3) of this chapter if a ~~third~~ **an additional** public
 20 comment period is not required under section 4.5 of this
 21 chapter; or

22 (C) during:

23 (i) a ~~third~~ **an additional** public comment period that address
 24 the portion of the preliminarily adopted rule that is
 25 substantively different from the language contained in the
 26 proposed rule published in a ~~second~~ notice under section 4
 27 of this chapter; and

28 (ii) the immediately preceding board meeting held under
 29 section 5(a)(1) of this chapter;

30 for a board meeting held under section 5(a)(3) of this chapter
 31 if a ~~third~~ **an additional** public comment period is required
 32 under section 4.5 of this chapter.

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

37 SECTION 48. IC 13-14-9-7 IS REPEALED [EFFECTIVE JULY 1,
 38 2023]. Sec. 7: (a) ~~Unless a board determines under section 5(c)(2) of~~
 39 ~~this chapter that a proposed rule should be subject to additional~~
 40 ~~comments;~~ section 3 of this chapter does not apply to a rulemaking

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

5 (1) the environment; or

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

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

12 SECTION 49. IC 13-14-9-8, AS AMENDED BY P.L.6-2012,
 13 SECTION 103, IS AMENDED TO READ AS FOLLOWS
 14 [EFFECTIVE JULY 1, 2023]: Sec. 8. (a) Except as provided in
 15 subsection (g); unless a board determines that a proposed rule should
 16 be subject to additional comments or makes a determination described
 17 in subsection (f); sections 2 through 7 and sections 9 through 14 of this
 18 chapter do not apply to a rulemaking action if the commissioner
 19 determines that:

20 (1) the proposed rule constitutes:

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

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

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

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

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

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

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

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

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

1 (b) If the commissioner makes a determination under subsection (a);
 2 the commissioner shall prepare written findings under this section. The
 3 full text of the commissioner's written findings shall be included in:

- 4 (1) the notice of adoption of the proposed rule; and
- 5 (2) the written materials to be considered by the board at the
 6 public hearing held under this section.

7 (c) The notice of adoption of a proposed rule under this section
 8 must:

- 9 (1) be published in the Indiana Register; and
- 10 (2) include the following:
 - 11 (A) Draft rule language that includes the language described
 12 in subsection (a)(1).
 - 13 (B) A written comment period of at least thirty (30) days.
 - 14 (C) A notice of public hearing before the appropriate board.

15 (d) The department shall include the following in the written
 16 materials to be considered by the board at the public hearing referred
 17 to in subsection (c):

- 18 (1) The full text of the proposed rule as most recently prepared by
 19 the department.
- 20 (2) Written responses of the department to written comments
 21 received during the comment period referred to in subsection (c).
- 22 (3) The commissioner's findings under subsection (b).

23 (e) At the public hearing referred to in subsection (c); the board
 24 may:

- 25 (1) adopt the proposed rule;
- 26 (2) adopt the proposed rule with amendments;
- 27 (3) reject the proposed rule;
- 28 (4) determine that additional public comment is necessary; or
- 29 (5) determine to reconsider the proposed rule at a subsequent
 30 board meeting.

31 (f) If the board determines under subsection (e) that additional
 32 public comment is necessary, the department shall publish a second
 33 notice in accordance with section 4 of this chapter and complete the
 34 rulemaking in accordance with this chapter.

35 (g) If the board adopts the proposed rule with amendments under
 36 subsection (e)(2), the amendments must meet the logical outgrowth
 37 requirements of section 10 of this chapter, except that the board, in
 38 determining whether the amendments are a logical outgrowth of
 39 comments provided to the board, and in considering whether the
 40 language of comments provided to the board fairly apprised interested

1 persons of the specific subjects and issues contained in the
 2 amendments; shall consider the comments provided to the board at the
 3 public hearing referred to in subsection (c)(2)(C):

4 (h) This subsection applies to that part of a rule adopted under this
 5 section that directly corresponds to and is based on a federal law, rule,
 6 or regulation that is stayed or repealed; invalidated; vacated; or
 7 otherwise nullified by a legislative; an administrative; or a judicial
 8 action described in subdivision (1); (2); or (3): If:

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

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

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

31 (B) either:

32 (i) that part of the adopted rule that corresponds to the
 33 invalidated; vacated; or otherwise nullified federal law, rule;
 34 or regulation is void as of the date that the judicial decree,
 35 order, or judgment becomes final and unappealable; or
 36 (ii) enforcement of the adopted rule is restored if the judicial
 37 decree, order, or judgment is reversed; vacated; or otherwise
 38 nullified on appeal; and

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

1 (1) that is the basis of a rule that is adopted under subsection
2 ~~(e)(1) by the board;~~ and based on a determination by the
3 commissioner under subsection ~~(a)(1)(A)~~

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

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

10 SECTION 50. IC 13-14-9-9 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 9. After complying
12 with sections ~~2 4~~ through ~~8 6~~ of this chapter, the board may, at the
13 board meeting held under section 5(a)(3) of this chapter:

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

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

18 ~~(3) (2) recommend amendments to the proposed rule; that do not~~
19 ~~meet the criteria set forth in section 10 of this chapter;~~

20 ~~(4) (3) reject the proposed rule; or~~

21 ~~(5) (4) reconsider the proposed rule at a subsequent board~~
22 ~~meeting in accordance with IC 4-22-2-26(d).~~

23 SECTION 51. IC 13-14-9-10 IS REPEALED [EFFECTIVE JULY
24 1, 2023]. Sec. ~~10~~: (a) ~~A board may amend a proposed rule at a board~~
25 ~~meeting held under section 5(a)(3) of this chapter and adopt the~~
26 ~~amended rule under section 9(2) of this chapter if the amendments are~~
27 ~~a logical outgrowth of:~~

28 ~~(1) the proposed rule as published under section 5(a)(2) of this~~
29 ~~chapter; and~~

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

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

35 ~~(1) whether the language of:~~

36 ~~(A) the proposed rule as published under section 5(a)(2) of~~
37 ~~this chapter; and~~

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

40 ~~fairly apprised interested persons of the specific subjects and~~

1 issues contained in the amendment; and

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

4 SECTION 52. IC 13-14-9-11 IS AMENDED TO READ AS
5 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 11. If the board
6 recommends amendments to a proposed rule under section ~~9(3)~~ **9(2)** of
7 this chapter, the full text of the proposed rule and accompanying
8 amendments shall be published in accordance with section 5(a)(2) of
9 this chapter. After that publication, the board shall hold another board
10 meeting on the proposed rule under section 5(a)(3) of this chapter.

11 SECTION 53. IC 13-14-9-12, AS AMENDED BY P.L.204-2007,
12 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 2023]: Sec. 12. The board may reject a proposed rule under
14 section ~~9(4)~~ **9** of this chapter if one (1) of the following conditions
15 exists:

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

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

19 ~~(B) either:~~

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

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

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

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

34 ~~(B) either:~~

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

37 ~~(ii) (3) The board determines that, due to a procedural or~~
38 ~~other defect in the implementation of the applicable~~
39 ~~rulemaking requirements, under sections 3 and 4 of this~~
40 ~~chapter, an interested or affected party will be unfairly and~~

1 substantially prejudiced if the public comment period under
2 section 4 of this chapter is not again afforded and that no
3 reasonable alternative method to obtain public comments is
4 available to the interested or affected party other than the
5 public comment period under section 4 of this chapter.

6 SECTION 54. IC 13-14-9-14, AS AMENDED BY P.L.133-2012,
7 SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2023]: Sec. 14. (a) Except as provided in subsection (g),
9 sections 1 through 13 of this chapter do not apply to a rule adopted
10 under this section.

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

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

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

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

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

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

- 32 (1) The full text of the proposed rule as most recently prepared by
33 the department.
- 34 (2) Written responses of the department to written comments
35 received during the comment period referred to in subsection
36 (d)(2).
- 37 (3) The letter prepared by the department approving the long term
38 control plan and use attainability analysis.

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

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

4 (2) adopt the proposed rule with amendments;

5 (3) reject the proposed rule; or

6 (4) determine to reconsider the proposed rule at a subsequent
 7 board meeting.

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

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

21 SECTION 55. IC 13-14-9-15 IS ADDED TO THE INDIANA
 22 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 23 [EFFECTIVE JULY 1, 2023]: **Sec. 15. Rules adopted in accordance**
 24 **with this chapter by the department of environmental management**
 25 **or a board that has rulemaking authority under this title expire as**
 26 **provided in IC 4-22-2.6.**

27 SECTION 56. IC 13-14-9-16 IS ADDED TO THE INDIANA
 28 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 29 [EFFECTIVE JULY 1, 2023]: **Sec. 16. (a) For a rule document**
 30 **subject to this chapter, the one (1) year period established under**
 31 **IC 4-22-2-25 in which to adopt a rule and obtain the approval or**
 32 **deemed approval of the governor commences on the date that the**
 33 **initial comment period notice for the rule document is published in**
 34 **the Indiana Register under section 4 of this chapter.**

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

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

1 **(2) the expected date the rule will be approved or deemed**
 2 **approved by the governor or withdrawn under IC 4-22-2-41.**
 3 **(c) If a rule is not approved before the later of:**
 4 **(1) one (1) year after the department publishes the initial**
 5 **notice of intent under this chapter; or**
 6 **(2) the expected date contained in a notice concerning the rule**
 7 **that is provided to the publisher under subsection (b);**
 8 **a later approval or deemed approval is ineffective, and the rule**
 9 **may become effective only through another rulemaking action**
 10 **initiated under this chapter."**

11 Delete pages 53 through 61.

12 Page 62, delete lines 1 through 9.

13 Page 64, between lines 30 and 31, begin a new paragraph and insert:

14 "SECTION 50. IC 13-20-10.5-1, AS ADDED BY P.L.189-2011,
 15 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2023]: Sec. 1. (a) A person may not ~~after June 30, 2011~~, start:

17 (1) construction of:

18 (A) a biomass anaerobic digestion facility; or

19 (B) a biomass gasification facility; or

20 (2) expansion of:

21 (A) a biomass anaerobic digestion facility; or

22 (B) a biomass gasification facility;

23 without obtaining prior approval of the department.

24 (b) ~~A person who proposes to construct or expand a biomass~~
 25 ~~anaerobic digestion facility or a biomass gasification facility on the~~
 26 ~~premises of a confined feeding operation must obtain A request for the~~
 27 ~~prior approval required under subsection (a) through shall be reviewed~~
 28 ~~according to the procedures and subject to the timelines for the~~
 29 ~~approval process for confined feeding operations under IC 13-18-10~~
 30 ~~and rules implementing that chapter.~~

31 SECTION 51. IC 14-10-2-5, AS AMENDED BY P.L.164-2020,
 32 SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2023]: Sec. 5. (a) The department may adopt ~~emergency~~ rules
 34 under ~~IC 4-22-2-37.1~~ **IC 4-22-2** to carry out the duties of the
 35 department under the following:

36 (1) IC 14-9.

37 (2) This article.

38 (3) IC 14-11.

39 (4) IC 14-12-2.

40 (5) IC 14-14.

- 1 (6) IC 14-15.
 2 (7) IC 14-17-3.
 3 (8) IC 14-18, except IC 14-18-6 and IC 14-18-8.
 4 (9) IC 14-19-1 and IC 14-19-8.
 5 (10) IC 14-21.
 6 (11) IC 14-22-3, IC 14-22-4, and IC 14-22-5.
 7 (12) IC 14-23-1.
 8 (13) IC 14-24.
 9 (14) IC 14-25, except IC 14-25-8-3 and IC 14-25-13.
 10 (15) IC 14-26.
 11 (16) IC 14-27.
 12 (17) IC 14-28.
 13 (18) IC 14-29.
 14 (19) IC 14-35-1, IC 14-35-2, and IC 14-35-3.
 15 (20) IC 14-37.
 16 (21) IC 14-38, except IC 14-38-3.
- 17 (b) **An emergency rule** adopted under subsection (a) **(as effective**
 18 **before July 1, 2023)** expires not later than one (1) year after the rule
 19 is accepted for filing by the publisher of the Indiana Register.
- 20 (c) A person who violates:
- 21 (1) an emergency rule adopted by the department **under**
 22 **IC 4-22-2-37.1 before July 1, 2023; or**
 23 (2) an interim rule adopted by the department **under**
 24 **IC 4-22-2-37.2 after June 30, 2023;**
 25 **to carry out a provision described in subsection (a)** commits a Class
 26 C infraction, unless otherwise specified under state law.
- 27 SECTION 52. IC 15-16-4-31, AS ADDED BY P.L.2-2008,
 28 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2023]: Sec. 31. As used in this chapter, "pesticide for use by
 30 prescription only" means any pesticide that:
- 31 (1) the board has found to be more hazardous than a restricted use
 32 pesticide so that any specific use and application must be
 33 determined and prescribed by a qualified pest management
 34 specialist approved by the state chemist; **and**
 35 (2) **is designated as a pesticide for use by prescription only in**
 36 **a rule of the board or a law enacted by the general assembly.**
- 37 SECTION 53. IC 15-16-4-37, AS ADDED BY P.L.2-2008,
 38 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2023]: Sec. 37. As used in this chapter, "restricted use
 40 pesticide" means **the following:**

- 1 (1) Any pesticide classified as a restricted use pesticide by the
 2 administrator of the United States Environmental Protection
 3 Agency ~~or (as of March 31, 2023).~~
 4 **(2) A pesticide designated as a pesticide in a law enacted by**
 5 **the general assembly.**
 6 ~~(2)~~ **(3) Subject to section 50 of this chapter,** a pesticide that the
 7 board has determined to be unduly hazardous to persons, animals,
 8 plants, wildlife, waters, or lands other than the pests it is intended
 9 to prevent, destroy, control, or mitigate.
 10 **(4) All formulations containing methomyl (Chemical**
 11 **Abstracts Service Reg. No. 16752-77-5).**
 12 **(5) Any dicamba containing pesticide product that:**
 13 **(A) contains a dicamba active ingredient concentration**
 14 **greater than or equal to six and one-half percent (6.5%);**
 15 **and**
 16 **(B) is intended for agricultural production uses but is not**
 17 **labeled solely for use on turf or other nonagricultural use**
 18 **sites.**

19 SECTION 54. IC 15-16-4-50, AS AMENDED BY P.L.99-2012,
 20 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2023]: Sec. 50. (a) The board may ~~adopt rules under IC 4-22-2~~
 22 ~~to do the following:~~

23 ~~(1)~~ **(1) Establish a list of recommend to the general assembly the**
 24 **addition, deletion, or reclassification of pesticides by**
 25 **submitting in an electronic format under IC 5-14-6 a report**
 26 **of the recommendations to the legislative council. In making**
 27 **a determination to add or reclassify a pesticide as a restricted**
 28 **use pesticides and pesticide or pesticides pesticide for use by**
 29 **prescription only for all of Indiana or designated areas within**
 30 **Indiana, if the board finds must find that the characteristics of a**
 31 **pesticide require that rules restricting the:**

- 32 ~~(A)~~ **(1) sale;**
 33 ~~(B)~~ **(2) distribution; or**
 34 ~~(C)~~ **(3) use;**

35 of the pesticide by any person are necessary to prevent undue hazards
 36 to persons, animals, wildlife, lands, or waters, other than the pests that
 37 they are intended to prevent, destroy, control, or mitigate. **After**
 38 **considering the factors enumerated in this subsection, the board**
 39 **shall make findings and recommendations concerning the control**
 40 **of the substance if it finds the substance. If any substance is**

1 designated or reclassified to a more restrictive schedule as a
2 pesticide under federal law and notice is given to the board, the
3 board shall recommend similar control of the substance under this
4 article in the board's report to the general assembly, unless the
5 board objects to inclusion or rescheduling. In that case, the board
6 shall publish the reasons for objection and afford all interested
7 parties an opportunity to be heard. At the conclusion of the
8 hearing, the board shall publish its findings in the Indiana
9 Register.

10 (b) The board may adopt rules under IC 4-22-2 to do the
11 following:

12 (1) Reclassify a pesticide:

13 (A) from a more restrictive classification to a less
14 restrictive classification; or

15 (B) as a substance that is not a pesticide;

16 if the board finds that the substance qualifies for
17 reclassification under this chapter and that the same
18 reclassification has been made in a classification under federal
19 law. If the board reclassifies a substance under this
20 subdivision, the board shall recommend the same
21 reclassification to the general assembly under subsection (a).
22 If the board objects to rescheduling or deletion of the
23 substance, the board shall notify the chair of the legislative
24 council not more than thirty (30) days after the federal law is
25 changed and the substance may not be reclassified or deleted
26 until the conclusion of the next complete session of the general
27 assembly. The notice from the board to the chair of the
28 legislative council must be published in the Indiana Register.
29 Notwithstanding a provision in this chapter that classifies a
30 pesticide in a more restrictive classification than a rule
31 adopted under this subdivision, a person who manufactures,
32 distributes, dispenses, possesses, or uses a pesticide in
33 compliance with the requirements applicable to the less
34 restrictive classification to which the pesticide is reclassified
35 under this subdivision does not commit a violation of law.
36 Notwithstanding a provision in this chapter that classifies a
37 substance as a pesticide, a person does not commit a violation
38 of law if the board has reclassified the pesticide as a substance
39 that is not a pesticide.

40 (2) Provide for the safe:

- 1 (A) handling;
 2 (B) transportation;
 3 (C) storage;
 4 (D) display;
 5 (E) distribution;
 6 (F) disposal; and
 7 (G) production;
 8 of pesticide products and pesticide containers.
- 9 (3) Restrict or prohibit the use of certain types of containers or
 10 packages for specific pesticides. The restrictions may apply to the:
 11 (A) type of construction;
 12 (B) strength; or
 13 (C) size;
 14 to alleviate danger of spillage, breakage, or misuse.
- 15 ~~(b) The board may adopt by reference the restricted use~~
 16 ~~classification of a pesticide that is maintained by the United States~~
 17 ~~Environmental Protection Agency.~~
- 18 (c) The board may adopt rules **under IC 4-22-2** to do the following:
 19 (1) Determine the time and conditions of the:
 20 (A) sale;
 21 (B) distribution; or
 22 (C) use;
 23 of pesticide products.
- 24 (2) Require that any or all pesticide products be purchased,
 25 possessed, or used only under:
 26 (A) permit;
 27 (B) certificate;
 28 (C) license; or
 29 (D) registration;
 30 of the state chemist or under certain conditions or in certain
 31 quantities or concentrations.
- 32 (3) Require all persons issued:
 33 (A) permits;
 34 (B) certificates;
 35 (C) licenses; or
 36 (D) registrations;
 37 under this subsection to maintain records as to the use of the
 38 pesticide products.
- 39 **(d) A rule adopted under this chapter that becomes effective**
 40 **after June 30, 2023, may not impose a restriction or requirement**

1 **more stringent than a restriction or requirement imposed under**
2 **federal law unless the restriction or requirement is specifically**
3 **authorized by Indiana law.**

4 (e) **The state chemist shall maintain a list of each class of**
5 **pesticides adopted by Indiana law or board rule on the website for**
6 **the state chemist. Failure to include a pesticide on the list does not**
7 **exempt a person from compliance with a law or rule for a pesticide**
8 **designated by law or rule.**

9 SECTION 55. IC 15-16-4-52, AS ADDED BY P.L.2-2008,
10 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2023]: Sec. 52. The state chemist may adopt rules under
12 IC 4-22-2 to administer this chapter, including rules providing for the
13 following:

14 (1) The collection and examination of samples of pesticide
15 products.

16 (2) Determining whether a pesticide product is highly toxic to
17 humans or wildlife.

18 (3) The issuance of permits to purchase, possess, or use
19 "restricted use pesticides" and "pesticides for use by prescription
20 only".

21 (4) Determining standards of coloring or discoloring for pesticide
22 products and to subject pesticide products to the requirements of
23 section 57 of this chapter.

24 **A rule described in this section that becomes effective after June**
25 **30, 2023, may not impose a restriction or requirement concerning**
26 **pesticides more stringent than a restriction or requirement**
27 **imposed under federal law unless the restriction or requirement is**
28 **specifically authorized by Indiana law.**

29 SECTION 56. IC 15-16-4-57, AS AMENDED BY P.L.99-2012,
30 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
31 JULY 1, 2023]: Sec. 57. Except as provided in section 58 of this
32 chapter, a person may not produce, distribute, display, sell, or offer for
33 sale within Indiana or deliver for transportation or transport in
34 intrastate commerce or between points within Indiana through any
35 point outside Indiana any of the following:

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

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

- 1 (3) A pesticide product if the composition of the product differs
 2 from the composition as represented in connection with its
 3 registration. However, at the discretion of the state chemist, a
 4 change in the labeling or formula of a pesticide may be made
 5 within a registration period without requiring reregistration of the
 6 product.
- 7 (4) Any pesticide product (except a bulk pesticide or a pesticide
 8 in a container designed and constructed to accommodate the
 9 return and refill of the container) unless it is in the registrant's or
 10 the manufacturer's unbroken immediate container, and there is
 11 affixed to that container, and to any outside container or wrapper
 12 of the retail package through which the required information on
 13 the immediate container cannot be clearly read, a label bearing:
- 14 (A) the name and address of the manufacturer, registrant, or
 15 person for whom manufactured;
 - 16 (B) the name, brand, or trademark under which the pesticide
 17 product is sold; and
 - 18 (C) the net weight or measure of the content, subject, however,
 19 to reasonable variations as the state chemist may permit.
- 20 (5) Any pesticide product that is adulterated or misbranded.
- 21 (6) Any pesticide product in containers violating rules adopted
 22 under section ~~50(a)(3)~~ **50(b)(3)** of this chapter. Pesticides found
 23 in containers that are unsafe due to damage may be seized and
 24 impounded.
- 25 (7) A highly volatile herbicide except on written permission by
 26 the state chemist.
- 27 (8) Any bulk pesticide unless it is accompanied in all transfers of
 28 custody or ownership by or held in storage vessels to which is
 29 affixed a label bearing the information specified in subdivision
 30 (4).
- 31 (9) Any pesticide that violates the Federal Insecticide, Fungicide,
 32 and Rodenticide Act (7 U.S.C. 136 et seq.) or regulations adopted
 33 under the Act.

34 SECTION 57. IC 15-16-5-72 IS ADDED TO THE INDIANA
 35 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 36 [EFFECTIVE JULY 1, 2023]: **Sec. 72. A rule adopted under this**
 37 **chapter that becomes effective after June 30, 2023, may not impose**
 38 **a restriction or requirement concerning pesticides more stringent**
 39 **than a restriction or requirement imposed under federal law unless**
 40 **the restriction or requirement is specifically authorized by Indiana**

- 1 **law."**
- 2 Page 64, between lines 36 and 37, begin a new line block indented
- 3 and insert:
- 4 **"(2) "Applicant" has the meaning set forth in IC 25-1-5-11."**
- 5 Page 64, line 37, delete "(2)" and insert "(3)".
- 6 Page 64, line 38, delete "(3)" and insert "(4)".
- 7 Page 64, delete lines 40 through 41, begin a new line block indented
- 8 and insert:
- 9 **"(5) "Enactment date" means the date on which a statute**
- 10 **requires rulemaking for a licensure rule to become effective**
- 11 **or otherwise requires rulemaking to commence."**
- 12 Page 64, line 42, delete "(5)" and insert "(6)".
- 13 Page 65, line 2, delete "(6)" and insert "(7)".
- 14 Page 65, line 3, delete "(7)" and insert "(8)".
- 15 Page 65, between lines 9 and 10, begin a new line block indented
- 16 and insert:
- 17 **"(9) "Material detriment" means:**
- 18 **(A) an inability to obtain a license, certification, permit, or**
- 19 **other credential from the agency or a board;**
- 20 **(B) an inability to:**
- 21 **(i) practice;**
- 22 **(ii) perform a procedure; or**
- 23 **(iii) engage in a particular professional activity in**
- 24 **Indiana or another jurisdiction; or**
- 25 **(C) any other substantial burden to professional or**
- 26 **business interests."**
- 27 Page 65, line 10, delete "(8)" and insert "(10)".
- 28 Page 65, line 11, after "adopted" insert **"as an interim rule under**
- 29 **IC 4-22-2-37.2"**.
- 30 Page 65, line 12, delete "eighteen (18)" and insert **"six (6)"**.
- 31 Page 65, delete lines 13 through 42, begin a new paragraph and
- 32 insert:
- 33 **"Sec. 2. (a) If a licensee or applicant believes that the agency or**
- 34 **a board has failed to adopt a licensure rule within six (6) months of**
- 35 **the enactment date, an applicant or licensee who has suffered a**
- 36 **material detriment as a result of a noncompliant licensure rule**
- 37 **may seek damages from the agency or board by bringing an action**
- 38 **in a court of competent jurisdiction.**
- 39 **(b) A court shall not certify a class in any matter seeking**
- 40 **damages under this section.**

1 (c) In a matter seeking damages under this section, a court may
2 order the following:

3 (1) An injunction requiring adoption of a compliant interim
4 licensure rule not earlier than six (6) months from the date of
5 the order.

6 (2) Damages equal to the amount of the material detriment
7 caused by the noncompliant licensure rule, including
8 prospective damages through the date established under
9 subdivision (1).

10 (3) Court costs and attorney's fees.

11 (d) IC 34-13-3 applies to an action brought under this section.

12 SECTION 58. IC 27-1-44.5-11, AS ADDED BY P.L.195-2021,
13 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2023]: Sec. 11. (a) The department shall adopt **emergency**
15 rules under ~~IC 4-22-2-37.1~~ **IC 4-22-2** to implement this chapter. The
16 rules must include a requirement that health payer data sources submit
17 necessary information to the administrator. Rules enacted under this
18 subsection must cover all health payer data sources as follows:

19 (1) The department shall adopt rules that apply to health payers
20 regulated under IC 27.

21 (2) The office of the secretary of family and social services shall
22 adopt rules that apply to health payers regulated under IC 12.

23 (b) The department shall adopt **emergency provisional** rules under
24 IC 4-22-2-37.1 establishing a fee formula for data licensing and the
25 collection and release of claims data.

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

30 Page 66, delete lines 1 through 37, begin a new paragraph and
31 insert:

32 "SECTION 59. IC 34-52-2-1.5 IS ADDED TO THE INDIANA
33 CODE AS A NEW SECTION TO READ AS FOLLOWS
34 [EFFECTIVE JULY 1, 2023]: **Sec. 1.5. (a) In a proceeding under**
35 **IC 4-21.5-5 to judicially review a final order made by a state**
36 **agency, the court shall apply the same standard as an**
37 **administrative law judge under IC 4-21.5-3-27.5 regarding an**
38 **order for the payment of attorney's fees.**

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

- 1 Page 66, line 39, delete "an emergency" and insert "**a provisional**".
- 2 Renumber all SECTIONS consecutively.
(Reference is to HB 1623 as printed February 14, 2023.)