

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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FISCAL IMPACT STATEMENT

LS 7025

BILL NUMBER: HB 1623

NOTE PREPARED: Feb 16, 2023

BILL AMENDED: Feb 14, 2023

SUBJECT: Administrative Rulemaking.

FIRST AUTHOR: Rep. Bartels

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State

Summary of Legislation: *Standard Rulemaking:* The bill requires: (1) authorization from the State Budget Agency and the Office of Management and Budget (OMB); and (2) two public comment periods of 30 days for all proposed rules (except emergency rules and agency corrections); before the rules may be adopted. It standardizes the economic and fiscal impact information that must be prepared by an agency in order to adopt a rule.

Readoption and Expiration: The bill requires rules to either expire or be readopted every five years rather than every seven years. It eliminates provisions that exempt certain rules from expiring. It provides for additional information concerning a readoption action to be published with a notice of readoption. It requires an agency to conduct a hearing on a proposed readoption. The bill eliminates differences between readoption procedures applicable to environmental rules and other rules. It validates readoption actions that become effective before July 1, 2023.

Emergency, Interim, and Expedited Rulemaking: The bill establishes criteria for use of emergency rulemaking procedures. It provides that rules formally adopted as emergency rules to implement a change in law or certain other circumstances may be adopted through emergency rule, interim rule, or expedited rule procedures. It requires preapproval by the Governor to adopt rules through these procedures in the case of emergency rules and interim rules. It requires preapproval by the OMB to adopt rules through expedited rule procedures. It authorizes the Attorney General or the Governor to suspend the operation of these rules. It requires the Attorney General to specify the basis for disapproving an emergency, interim, or expedited rule. It requires an agency to conduct one comment period before adopting a rule using the interim rulemaking procedures. It eliminates indefinite expiration dates for emergency rules and reorganizes provisions related to expiration dates and extension periods. It specifies when expedited rules expire and limits the number of

times expedited rules may be extended. It indicates how to calculate the one year period in which an environmental agency must complete a rulemaking process. It provides transitional provisions.

Conforming Legislation: The bill requires the Code Revision Commission to prepare conforming legislation for introduction in the 2024 legislative session.

Actions Against Agencies: The bill provides that a party prevailing against the agency is entitled to attorney's fees if the agency has acted without legal authority having the force of or enforceable as law.

Federal CCR Rule: The bill amends the law requiring the Department of Environmental Management (IDEM) to establish a state permit program for the implementation in Indiana of the federal standards for the disposal of coal combustion residuals (CCR) in landfills and surface impoundments (the federal CCR rule). It provides that the rules adopted by the Environmental Rules Board (ERB) concerning the disposal of CCR in landfills and surface impoundments:

- (1) shall be consistent with the federal CCR rule;
- (2) shall not impose a restriction or requirement that is more stringent than the corresponding restriction or requirement imposed under the federal CCR rule; and
- (3) shall not impose a restriction or requirement that is not imposed by the federal CCR rule.

It defines "legacy generation resource" as an electric generating facility that is directly or indirectly owned by a corporation that was originally formed for the purpose of providing power to the federal government for use in the nation's defense or in furtherance of national interests. It provides that the authority of the IDEM to establish requirements under the state permit program is the only authority the IDEM has to establish requirements for a surface impoundment of CCR located on the grounds of a legacy generation resource.

Failure to Promulgate Licensure Rule: The bill provides that if an agency fails to promulgate a required rule relating to licensure, a licensee is not required to pay license fees relating to the rule and is entitled to the refund of any already paid licensure fees. It establishes a procedure to determine whether a required rule has been promulgated. It repeals superseded statutes and makes cross reference, name, and other conforming changes.

Effective Date: Upon passage; July 1, 2023.

Explanation of State Expenditures: *Administrative Rules:* The bill would increase workload for most state agencies. It establishes that administrative rules would expire on a five-year cycle, rather than a seven-year cycle, causing rulemaking tasks to be more frequent. Agencies would be required to provide data, studies, and analyses relied upon for their regulatory analysis to the Legislative Services Agency (LSA), in certain conditions; to have a second comment period; and to prepare summaries of written comments and agency responses for both public comment periods. Additionally, the bill expires emergency rules with indefinite expiration dates. Therefore, some agencies would have additional workload to address these emergency rules. Conversely, the bill may streamline some processes, and provides for an interim rule (one public comment period) or an expedited rule in other situations where temporary rules may be needed. Emergency, interim, and expedited rulemaking would require pre-approval from the Governor.

Workload could also increase for the Indiana Register and Administrative Code Division of the LSA to publish rulemaking documents more frequently, to update the Administrative Rules Drafting Manual, and assist agencies with the new requirements.

Actions Against Agencies: State expenditures could increase for agencies governed by the Administrative Orders and Procedures Act (AOPA). If an administrative law judge (ALJ) finds that a state agency failed to demonstrate that an agency action was based on a standard (or interpretation of a standard) that has the force of law or failed to demonstrate that the agency acted within its legal authority, the ALJ must order the state agency to pay the reasonable attorney's fees incurred by the challenging party. Depending on the agency, the funds to pay the affected party's attorney fees would either be the state General Fund or dedicated agency funds.

Failure to Promulgate Licensure Rule: Expenditures could increase if a professional licensure rule is determined to be noncompliant and license fees are refunded. (See *Explanation of State Revenues.*)

Federal CCR Rule: The bill requires (current law allows) the ERB to adopt rules regarding the federal CCR rule, with specifications given in the bill. Rulemaking is a routine function of the ERB.

Explanation of State Revenues: *Failure to Promulgate Licensure Rule:* Revenues could be reduced if the Professional Licensing Agency (PLA), including a board for which the PLA performs administrative functions, duties, and responsibilities, has failed to adopt a licensure rule within 18 months of the enactment date. A licensee may request a determination that the licensure rule is noncompliant. If the executive director of the PLA, the Governor, or the Attorney General determines that the rule is noncompliant, the licensee is not required to pay the license fee and is entitled to a refund of license fees from the enactment date until the rule becomes compliant. Nonpayment for a noncompliant licensure rule does not affect the validity of the license.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Potentially all state agencies under AOPA (IC 4-21.5), or agencies with rulemaking authority under IC 4-22 or IC 13-14-9.

Local Agencies Affected:

Information Sources: Legislative Services Agency, Administrative Rules Drafting Manual and Agencies with Emergency Rulemaking Authority:

<http://iac.iga.in.gov/iac/IACDrftMan.pdf>

<http://iac.iga.in.gov/iac/appendix-d-emergency%20rule%20authorities.pdf>

<https://www.in.gov/omb/rule-approval-process/>

<https://www.in.gov/sba/files/FMC-5.1-OMB-Review-of-Agency-Rulemaking-January-1,-2022.pdf>

<https://www.in.gov/sba/files/FMC-5.2-SBA-Review-of-Agency-Rulemaking-January-1,-2022.pdf>

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