

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

200 W. Washington St., Suite 301
Indianapolis, IN 46204
(317) 233-0696
iga.in.gov

FISCAL IMPACT STATEMENT

LS 7025

BILL NUMBER: HB 1623

NOTE PREPARED: Apr 11, 2023

BILL AMENDED: Apr 11, 2023

SUBJECT: Administrative Rulemaking.

FIRST AUTHOR: Rep. Bartels

FIRST SPONSOR: Sen. Garten

BILL STATUS: 2nd Reading - 2nd House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State

Summary of Legislation: (Amended) *Administrative Rulemaking:* The bill makes various procedural changes concerning the adoption of administrative rules, including the following:

- (1) It requires Budget Agency (SBA) and Office of Management and Budget (OMB) review of a regulatory analysis of all proposed rules.
- (2) It requires a State Budget Committee review of rules adding or increasing fees, fines, or civil penalties.
- (3) It requires publication of the text of a proposed rule in the first comment period and allows a proposed rule to be adopted after one comment period if no substantive public testimony is received and the rule is not more stringent than applicable federal standards.
- (4) It replaces various laws granting emergency rulemaking authority with a description of the circumstances when emergency rulemaking (renamed "provisional" rules and "interim" rules) may be used. It increases Governor and Attorney General oversight of emergency rules, and adds a public comment period for interim rules.
- (5) It reduces from seven to five years the time in which rules need to be readopted to remain effective.
- (6) It requires agencies to webcast public hearings and allow remote testimony.

Federal CCR Rule: The bill prohibits state standards for disposal of coal combustion residuals (CCR) to be more stringent than federal standards.

Pesticide Regulations: The bill requires the General Assembly to enact legislation concerning classification of a substance as a restricted use pesticide or requirements that are more stringent than federal requirements. It permits interim rules concerning pesticides pending review by the General Assembly. It prohibits state

pesticide regulations that are more stringent than federal regulations.

Actions Against Agencies: The bill permits a person to recover attorney fees if an agency issues an order that is based on an invalid rule or issued without legal authority.

Failure to Promulgate Licensure Rule: The bill permits an applicant or licensee to recover damages if a professional or occupational licensing agency fails to adopt a rule required to obtain a license.

It repeals superseded statutes and makes cross reference, name, and other conforming changes.

Effective Date: Upon passage; January 1, 2023; 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 webcast public hearings and allow for members of the public to attend and comment remotely; have a second comment period (with exceptions); and to prepare summaries of written comments and agency responses for both public comment periods.

Some state agencies may have additional workload to address any current administrative rules that include a fee, fine, or penalty, where the rule does not set forth a specific dollar amount, formula, or range (stating the factors that will be used in determining the amount). Any emergency rules (now called provisional rules) with indefinite expiration dates will also need to be addressed (these rules are expired by the bill). Workload will increase for the Budget Committee, as the bill requires all rules that increase or expand application of a fee, fine, or civil penalty to be reviewed by the Budget Committee.

Conversely, the bill may streamline some processes, and provides for an interim rule (one public comment period) where temporary rules may be needed. Provisional and interim rulemaking would require pre-approval from the Governor. The bill may also minimally decrease expenditures for agencies as it removes the requirement for an agency to publish notice in a newspaper (notice of intention to adopt a rule or notice of a public hearing).

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 action was based on an invalid rule or that a state agency 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.

(Revised) *Failure to Promulgate Licensure Rule:* Expenditures could increase for the Professional Licensing Agency (PLA), including a board for which the PLA performs administrative functions, duties, and responsibilities, if they have failed to adopt a licensure rule within 6 months of the enactment date. An applicant or licensee may bring a court action, and if the professional licensure rule is determined to be

noncompliant, the court may award damages equal to the material detriment caused by the noncompliant licensure rule, as well as court costs and attorney's fees. This provision only applies to a licensure rule required by a statute with an enactment date after January 1, 2023.

(Amended) *Pesticide Regulations*: The State Chemist and the Pesticide Review Board would need to amend any rules that are more restrictive than the requirements and restrictions of federal laws and regulations concerning the storage, use, and application of the same general use pesticide. This is a routine function and should be accomplished within existing resources assuming near customary staffing and resource levels.

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: (Amended) *Pesticide Regulations*: The bill could potentially reduce penalty revenue for violations of storage, use, or application administrative rules (not laws) regarding general use pesticides (not restricted-use pesticides), if the current rule is more restrictive than federal law or regulations. Pesticide penalties collected by the State Chemist go directly to Purdue Cooperative Extension Services for education and training regarding fertilizers and pesticides (IC 15-16-4-69(h)).

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Pesticide Review Board; State Chemist; Purdue University Extension Services; 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>

Katie Nelson, Indiana State Department of Agriculture;

David Scott, Office of Indiana State Chemist;

EPA, Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA):

<https://www.epa.gov/enforcement/federal-insecticide-fungicide-and-rodenticide-act-fifra-and-federal-facilities>

Office of the Indiana State Chemist, Pesticides and Fertilizers:

https://oisc.purdue.edu/oisc_rules_regs_laws.html#pestlaws

Fiscal Analyst: Heather Puletz, 317-234-9484; Jasmine Noel, 317-234-1360.