

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

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FISCAL IMPACT STATEMENT

LS 7025

BILL NUMBER: HB 1623

NOTE PREPARED: May 1, 2023

BILL AMENDED: Apr 27, 2023

SUBJECT: Administrative Rulemaking.

FIRST AUTHOR: Rep. Bartels

FIRST SPONSOR: Sen. Garten

BILL STATUS: Enrolled

FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL

IMPACT: State

Summary of Legislation: *Government Reform Task Force:* The bill establishes the Government Reform Task Force. It provides for members of the task force. It requires the task force to submit a report.

State Employee Evaluation and Compensation: The bill prohibits the consideration of the number or amount of fines or civil penalties imposed on regulated entities by an employee in an agency's evaluation or compensation of the employee.

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 public comment period and allows a proposed rule to be adopted after one public comment period if no substantive public testimony is received and the rule is not more stringent than applicable federal standards.
- (4) 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 provisional or interim 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 allows for certain rules on certain pesticides that are more stringent than federal law.

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

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: *Government Reform Task Force:* The bill establishes the Government Reform Task Force, consisting of 10 legislative members. The task force is to review external policies and standards of procedure implemented by state agencies and any other issues related to agency oversight, as determined by the task force. They are to submit an annual report of recommendations to the Legislative Services Agency (LSA) by November 1 of each year, beginning in 2023. Recent expenditures for a similarly sized task force that held four meetings in the 2022 interim was about \$8,000.

The LSA is to provide staff support to the task force. The task force expires December 31, 2025, so expenses of the task force could extend into FY 2025 and/or FY 2026 if the task force holds meetings in late 2024 or in 2025. The bill allows the task force to request information or testimony from department or agency heads (or designees). Workload could increase for any state agency compiling information for or testifying to the task force.

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 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's fees would either be the state General Fund or dedicated agency funds.

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.

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 pesticide, with certain exceptions provided in the bill. 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: *State Employee Evaluation and Compensation:* The bill prohibits a state agency from considering the number or amount of fines or civil penalties imposed on regulated entities by an employee in the evaluation or compensation of the employee. It is unknown whether any agency currently uses this consideration in employee evaluations.

Pesticide Regulations: The bill could potentially reduce penalty revenue for violations of storage, use, or application administrative rules (not laws) regarding pesticides, if the current rule is more restrictive than federal law or regulations, with certain exceptions provided in the bill. 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: General Assembly, Legislative Services Agency, 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>

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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

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