

Updated April 3, 2023 (3:13pm)

HOUSE BILL No. 1623

AM162311 has been incorporated into February 14, 2023 printing.

Synopsis: Administrative rulemaking.

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February 14, 2023

First Regular Session of the 123rd General Assembly (2023)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2022 Regular Session of the General Assembly.

HOUSE BILL No. 1623

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-3-22-13, AS AMENDED BY P.L.5-2015,
 2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2023]: Sec. 13. (a) ~~Except as provided in subsection (c), the~~
 4 ~~OMB shall perform a cost benefit analysis upon each proposed rule and~~
 5 ~~provide to:~~
 6 (1) ~~the governor; and~~
 7 (2) ~~the legislative council;~~
 8 ~~an assessment of the rule's effect on Indiana business. The OMB shall~~
 9 ~~submit the cost benefit analysis to the legislative council in an~~
 10 ~~electronic format under IC 5-14-6.~~
 11 (b) ~~After June 30, 2005, the cost benefit analysis performed by the~~
 12 ~~OMB under this section with respect to any proposed rule that has an~~
 13 ~~impact of at least five hundred thousand dollars (\$500,000) shall~~
 14 ~~replace and be used for all purposes under IC 4-22-2 in lieu of the~~

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1 fiscal analysis previously performed by the legislative services agency
2 under IC 4-22-2.

3 ~~(e) The OMB and the budget agency shall review a regulatory~~
4 ~~analysis and proposed rule submitted by an agency under~~
5 ~~IC 4-22-2-22.8. In preparing a cost benefit reviewing a regulatory~~
6 ~~analysis and proposed rule under this section, the OMB shall consider~~
7 ~~in its analysis any verified data provided voluntarily by interested~~
8 ~~parties, regulated persons, and nonprofit corporations whose members~~
9 ~~may be affected by the proposed rule. A cost benefit analysis prepared~~
10 ~~under this section is a public document, subject to the following:~~

11 (1) This subsection does not empower the OMB or an agency to
12 require an interested party or a regulated person to provide any
13 materials, documents, or other information. ~~in connection with~~
14 ~~a cost benefit analysis under this section.~~ If an interested party or
15 a regulated person voluntarily provides materials, documents, or
16 other information to the OMB or an agency, ~~in connection with~~
17 ~~a cost benefit analysis under this section,~~ the OMB or the
18 agency, as applicable, shall ensure the adequate protection of
19 any:

- 20 (A) information that is confidential under IC 5-14-3-4; or
21 (B) confidential and proprietary business plans and other
22 confidential information.

23 (2) If an agency has adopted rules to implement IC 5-14-3-4,
24 interested parties and regulated persons must submit the
25 information in accordance with the confidentiality rules adopted
26 by the agency to ensure proper processing of confidentiality
27 claims. The OMB and any agency involved in proposing the
28 rule, or in administering the rule upon the rule's adoption, shall
29 exercise all necessary caution to avoid disclosure of any
30 confidential information supplied to the OMB or the agency by
31 an interested party or a regulated person.

32 ~~(2) The OMB shall make the cost benefit analysis and other~~
33 ~~related public documents available to interested parties,~~
34 ~~regulated persons, and nonprofit corporations whose members~~
35 ~~may be affected by the proposed rule at least thirty (30) days~~
36 ~~before presenting the cost benefit analysis to the governor and~~
37 ~~the legislative council under subsection (a):~~

38 (d) If the OMB or an agency is unable to obtain verified data for
39 the cost benefit analysis described in subsection (c), the OMB shall
40 state in the cost benefit analysis which data were unavailable for
41 purposes of the cost benefit analysis.

42 (e) If the OMB finds that a proposed rule is:

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1 (1) an adoption or incorporation by reference of a federal law;
 2 regulation; or rule that has no substantive effect on the scope or
 3 intended application of the federal law or rule; or
 4 (2) a technical amendment with no substantive effect on an
 5 existing Indiana rule;
 6 the OMB may not prepare a cost benefit analysis of the rule under this
 7 section. The agency shall submit the proposed rule to the OMB with a
 8 statement explaining how the proposed rule meets the requirements of
 9 this subsection. If the OMB finds that the rule meets the requirements
 10 of this subsection, the OMB shall provide its findings to the governor
 11 and to the legislative council in an electronic format under IC 5-14-6.
 12 If the agency amends or modifies the proposed rule after the OMB
 13 finds that a cost benefit analysis may not be prepared for the rule, the
 14 agency shall resubmit the proposed rule to the OMB either for a new
 15 determination that the rule meets the requirements of this subsection;
 16 or for the OMB to prepare a cost benefit analysis of the rule under this
 17 section.

18 SECTION 2. IC 4-21.5-2-8 IS ADDED TO THE INDIANA CODE
 19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 20 1, 2023]: **Sec. 8. The amendments made to IC 4-21.5-3-27.5 and**
 21 **IC 34-52-2-1.5 in the 2023 session of the general assembly only**
 22 **apply to agency actions commenced under IC 4-21.5-3 after June**
 23 **30, 2023.**

24 SECTION 3. IC 4-21.5-3-27.5, AS ADDED BY P.L.199-2021,
 25 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2023]: Sec. 27.5. In a proceeding under this chapter
 27 concerning an agency action, the administrative law judge shall order
 28 the agency to pay the reasonable attorney's fees incurred in the
 29 proceeding by the **prevailing** party challenging the agency action if:

- 30 (1) the party challenging the agency action proves, by a
 31 preponderance of the evidence, that:
 32 (1) (A) the agency's action was frivolous or groundless; or
 33 (2) (B) the agency pursued the action in bad faith;
 34 (2) the agency action was based on an invalid rule, as
 35 provided in IC 4-22-2-44; or
 36 (3) the agency has failed to demonstrate that the agency
 37 acted within its legal authority.

38 SECTION 4. IC 4-22-2-0.1, AS AMENDED BY P.L.53-2014,
 39 SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2023]: Sec. 0.1. (a) The amendments made to this chapter by
 41 P.L.44-1995 apply as follows:

- 42 (1) The amendments made to sections 13, 19, 23, 25, and 28 of

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1 this chapter apply to a rulemaking action that commences after
2 June 30, 1995.

3 (2) The addition of sections 23.1 and 46 (repealed) of this
4 chapter applies to a rulemaking action that commences after
5 June 30, 1995.

6 **(b) This chapter (as effective January 1, 2023) continues to**
7 **apply after June 30, 2023, to a rulemaking action that is**
8 **commenced under this chapter before July 1, 2023, and is pending**
9 **on July 1, 2023.**

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
 - 23 an 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 SECTION 6. IC 4-22-2-13, AS AMENDED BY P.L.2-2007,
38 SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
39 JULY 1, 2023]: Sec. 13. (a) Subject to subsections (b), (c), and (d), this
40 chapter applies to the addition, amendment, or repeal of a rule in every
41 rulemaking action.

42 (b) This chapter does not apply to the following agencies:

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- 1 (1) Any military officer or board.
- 2 (2) Any state educational institution.
- 3 (c) This chapter does not apply to a rulemaking action that results
- 4 in any of the following rules:
- 5 (1) A resolution or directive of any agency that relates solely to
- 6 internal policy, internal agency organization, or internal
- 7 procedure and does not have the effect of law.
- 8 (2) A restriction or traffic control determination of a purely local
- 9 nature that:
- 10 (A) is ordered by the commissioner of the Indiana
- 11 department of transportation;
- 12 (B) is adopted under IC 9-20-1-3(d), IC 9-21-4-7, or
- 13 IC 9-20-7; and
- 14 (C) applies only to one (1) or more particularly described
- 15 intersections, highway portions, bridge causeways, or
- 16 viaduct areas.
- 17 (3) A rule adopted by the secretary of state under
- 18 IC 26-1-9.1-526.
- 19 (4) An executive order or proclamation issued by the governor.
- 20 **(5) A rule adopted by the board of trustees of the Indiana**
- 21 **public retirement system, as provided in IC 5-10.5-4-2.**
- 22 **However, the board shall submit rules adopted by the board**
- 23 **to the publisher for publication in the Indiana Register.**
- 24 (d) Except as specifically set forth in IC 13-14-9:
- 25 **(1) IC 13-14-9 provides supplemental procedures for notice**
- 26 **and public comment concerning proposed rules for the**
- 27 **boards listed in IC 13-14-9-1; and**
- 28 **(2) the department of environmental management and the**
- 29 **boards listed in IC 13-14-9-1 shall comply with the**
- 30 **procedures in IC 13-14-9 in lieu of complying with sections**
- 31 **24, 26, 27, and 29 (except section 29(c)) of this chapter. do not**
- 32 **apply to rulemaking actions under IC 13-14-9.**
- 33 **In adopting rules, all other provisions of IC 4-22-2 apply to these**
- 34 **agencies.**
- 35 SECTION 7. IC 4-22-2-15 IS AMENDED TO READ AS
- 36 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 15. Any rulemaking
- 37 action that this chapter allows or requires an agency to perform, other
- 38 than final adoption of a rule under section 29, ~~or~~ 37.1, ~~or~~ 37.2 of this
- 39 chapter ~~or~~ IC 13-14-9, may be performed by the individual or group of
- 40 individuals with the statutory authority to adopt rules for the agency, a
- 41 member of the agency's staff, or another agent of the agency. Final
- 42 adoption of a rule under section 29, ~~or~~ 37.1, ~~or~~ 37.2 of this chapter ~~or~~

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1 **IC 13-14-9**, including readoption of a rule that is subject to sections 24
 2 through 36 or to section 37.1 of this chapter and recalled for further
 3 consideration under section 40 of this chapter, may be performed only
 4 by the individual or group of individuals with the statutory authority to
 5 adopt rules for the agency.

6 SECTION 8. IC 4-22-2-17 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 17. (a) IC 5-14-3
 8 applies to the text of a rule that an agency intends to adopt from the
 9 earlier of the date that the agency takes any action under ~~section 24~~
 10 **section 23** of this chapter, otherwise notifies the public of its intent to
 11 adopt a rule under any statute, or adopts the rule.

12 (b) IC 5-14-3 applies both to a rule and to the full text of a matter
 13 directly or indirectly incorporated by reference into the rule.

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**
 21 **that 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.**

41 SECTION 9. IC 4-22-2-17.5 IS ADDED TO THE INDIANA
 42 CODE AS A NEW SECTION TO READ AS FOLLOWS

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1 [EFFECTIVE JULY 1, 2023]: **Sec. 17.5. (a) The legislative services**
 2 **agency shall provide electronic summaries or electronic copies of**
 3 **documents submitted to the publisher under this article or**
 4 **IC 13-14-9 to legislators and legislative committees in the manner**
 5 **and on the schedule specified by the legislative council or the**
 6 **personnel subcommittee of the legislative council acting for the**
 7 **legislative council.**

8 **(b) If requested in the manner specified by the legislative**
 9 **council or the personnel subcommittee of the legislative council**
 10 **acting for the legislative council, an agency shall provide to the**
 11 **legislative services agency any data, studies, or analyses relied on**
 12 **by the agency to develop a regulatory analysis or a revised**
 13 **regulatory analysis. The agency shall comply with any policies**
 14 **adopted by the legislative council or the personnel subcommittee**
 15 **of the legislative council governing the format, timing, and manner**
 16 **of delivery of the data, studies, or analyses.**

17 SECTION 10. IC 4-22-2-19, AS AMENDED BY P.L.53-2014,
 18 SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2023]: **Sec. 19. (a) Except as provided in section 23.1 of this**
 20 **chapter, This section does not apply to the adoption of rules**

21 ~~(1)~~ required to receive or maintain:

22 ~~(A)~~ **(1)** delegation;

23 ~~(B)~~ **(2)** primacy; or

24 ~~(C)~~ **(3)** approval;

25 for state implementation or operation of a program established
 26 under federal law.

27 ~~(2)~~ that amend an existing rule;

28 ~~(3)~~ required or authorized by statutes enacted before June 30,
 29 1995; or

30 ~~(4)~~ required or authorized by statutes enacted before June 30,
 31 1995, and recodified in the same or similar form after June 29,
 32 1995, in response to a program of statutory recodification
 33 conducted by the code revision commission.

34 (b) If an agency will have statutory authority to adopt a rule at the
 35 time that the rule becomes effective, the agency may conduct any part
 36 of its rulemaking action before the statute authorizing the rule becomes
 37 effective.

38 ~~(c)~~ However, an agency shall:

39 (1) begin ~~the a~~ rulemaking process **needed to implement the**
 40 **statutory change** not later than sixty (60) days after the effective
 41 date of the statute that authorizes the rule; or

42 (2) if an agency cannot comply with subdivision (1), provide

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1 electronic notice to the publisher stating the reasons for the
2 agency's noncompliance.

3 **(c) For purposes of this section, a rulemaking process is**
4 **commenced when:**

5 **(1) the agency publishes a proposed rule under section 23 or**
6 **37.2 of this chapter; or**

7 **(2) in the case of a change in a statute described in section 38**
8 **of this chapter, the date the agency files with the publisher a**
9 **rule document under section 38 of this chapter.**

10 **If an interim rulemaking procedure is commenced under section**
11 **37.2 of this chapter, the agency shall commence a permanent**
12 **rulemaking process under section 23 of this chapter before the**
13 **adopted interim rule expires.**

14 SECTION 11. IC 4-22-2-19.5 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 19.5. (a) To the extent
16 possible, a rule adopted under this article or ~~under IC 13-14-9.5~~
17 **IC 13-14-9** shall comply with the following:

18 (1) Minimize the expenses to:

19 (A) regulated entities that are required to comply with the
20 rule;

21 (B) persons who pay taxes or pay fees for government
22 services affected by the rule; and

23 (C) consumers of products and services of regulated entities
24 affected by the rule.

25 (2) Achieve the regulatory goal in the least restrictive manner.

26 (3) Avoid duplicating standards found in state or federal laws.

27 (4) Be written for ease of comprehension.

28 (5) Have practicable enforcement.

29 (b) Subsection (a) does not apply to a rule that must be adopted in
30 a certain form to comply with federal law.

31 SECTION 12. IC 4-22-2-19.6 IS ADDED TO THE INDIANA
32 CODE AS A NEW SECTION TO READ AS FOLLOWS
33 [EFFECTIVE JANUARY 1, 2023 (RETROACTIVE)]: **Sec. 19.6. (a)**
34 **A rule adopted under this article or IC 13-14-9 that includes a fee,**
35 **fine, or civil penalty must comply with this section. Subsections (b),**
36 **(c), and (d) do not apply to a rule that must be adopted in a certain**
37 **form to comply with federal law.**

38 **(b) For each fee, fine, or civil penalty imposed by an agency**
39 **that is not set as a specific amount in a state law, a rule must**
40 **describe the circumstances for which the agency will assess a fee,**
41 **fine, or civil penalty and set forth the amount of the fee, fine, or**
42 **civil penalty:**

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- 1 **(1) as a specific dollar amount;**
- 2 **(2) under a formula by which a specific dollar amount can be**
- 3 **reasonably calculated by persons regulated or otherwise**
- 4 **affected by the rule; or**
- 5 **(3) as a range of potential dollar amounts, stating the factors**
- 6 **that the agency will utilize to set a specific dollar amount in**
- 7 **an individual case with sufficient certainty that a review of**
- 8 **an agency action under IC 4-21.5 or comparable process can**
- 9 **evaluate whether the amount was reasonable.**

10 **A rule concerning fines or civil penalties does not prohibit an**
 11 **agency to enter into a settlement agreement with a person against**
 12 **whom a fine or civil penalty is being assessed to determine the fine**
 13 **or civil penalty to be paid for a violation.**

14 **(c) The amount of a fee must be reasonably based on the**
 15 **amount necessary to carry out the purposes for which the fee is**
 16 **imposed.**

17 **(d) An agency setting a fine or civil penalty shall consider the**
 18 **following:**

- 19 **(1) Whether the violation has a major or minor impact on**
- 20 **the health, safety, or welfare of a person, the health or safety**
- 21 **of animals or natural resources, or other facts set forth in the**
- 22 **agency's rule.**
- 23 **(2) The number of previous violations committed by the**
- 24 **offender of laws, rules, or programs administered by the**
- 25 **agency.**
- 26 **(3) The need for deterrence of future violations.**
- 27 **(4) Whether the conduct, if proved beyond a reasonable**
- 28 **doubt, would constitute a criminal offense, and the level of**
- 29 **penalty set by law for the criminal offense.**

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

- 32 **(1) the fee, fine, or civil penalty was included in a rule that**
- 33 **became effective before January 1, 2023, and that otherwise**
- 34 **complies with subsection (b);**
- 35 **(2) the fee, fine, or civil penalty was:**
 - 36 **(A) set by an agency before January 1, 2023;**
 - 37 **(B) reviewed by the budget committee:**
 - 38 **(i) in the case of the department of environmental**
 - 39 **management, the boards listed in IC 13-14-9-1, the**
 - 40 **office of environmental adjudication, the natural**
 - 41 **resources commission, the department of natural**
 - 42 **resources, the Indiana gaming commission, and the**

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1 **Indiana horse racing commission, before December**
2 **31, 2023; and**
3 **(ii) in the case of an agency not described in item (i),**
4 **before July 1, 2024; and**
5 **(C) included in a rule that complies with this section and**
6 **becomes effective before:**
7 **(i) in the case of the department of environmental**
8 **management, the boards listed in IC 13-14-9-1, the**
9 **office of environmental adjudication, the natural**
10 **resources commission, the department of natural**
11 **resources, the Indiana gaming commission, and the**
12 **Indiana horse racing commission, December 31,**
13 **2024; and**
14 **(ii) in the case of an agency not described in item (i),**
15 **July 1, 2025; or**
16 **(3) the agency withdraws or otherwise ceases to enforce or**
17 **apply the fee, fine, or civil penalty before:**
18 **(A) in the case of the department of environmental**
19 **management, the boards listed in IC 13-14-9-1, the office**
20 **of environmental adjudication, the natural resources**
21 **commission, the department of natural resources, the**
22 **Indiana gaming commission, and the Indiana horse**
23 **racing commission, December 31, 2023; and**
24 **(B) in the case of an agency not described in item (i),**
25 **July 1, 2024.**
26 **Readoption without changes under IC 4-22-2.6 of a nonconforming**
27 **fee, fine, or civil penalty that meets the requirements of subdivision**
28 **(1) or (2) does not invalidate the nonconforming fee, fine, or civil**
29 **penalty.**
30 **(f) Beginning January 1, 2024, an agency shall post on its**
31 **website a schedule of fines and civil penalties that apply to**
32 **violations of laws, rules, and requirements of federal programs**
33 **administered by the agency.**
34 **SECTION 13. IC 4-22-2-21, AS AMENDED BY P.L.204-2016,**
35 **SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE**
36 **JULY 1, 2023]: Sec. 21. (a) If incorporation of the text in full would be**
37 **cumbersome, expensive, or otherwise inexpedient, an agency may**
38 **incorporate by reference into a rule part or all of any of the following**
39 **matters:**
40 **(1) A federal or state statute, rule, or regulation.**
41 **(2) A code, manual, or other standard adopted by an agent of the**
42 **United States, a state, or a nationally recognized organization or**

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1 association.

2 (3) A manual of the department of local government finance

3 adopted in a rule described in IC 6-1.1-31-9.

4 (4) The following requirements:

5 (A) The schedule, electronic formatting, and standard data,

6 field, and record coding requirements for:

7 (i) the electronic data file under IC 6-1.1-4-25

8 concerning the parcel characteristics and parcel

9 assessments of all parcels and personal property return

10 characteristics and assessments; and

11 (ii) the electronic data file under IC 36-2-9-20

12 concerning the tax duplicate.

13 (B) The schedule, electronic formatting, and standard data,

14 field, and record coding requirements for data required to

15 be submitted under IC 6-1.1-5.5-3 or IC 6-1.1-11-8.

16 (C) Data export and transmission format requirements for

17 information described in clauses (A) and (B).

18 (b) Each matter incorporated by reference under subsection (a)

19 must be fully and exactly described.

20 (c) An agency may refer to a matter that is directly or indirectly

21 referred to in a primary matter by fully and exactly describing the

22 primary matter.

23 (d) **Except as otherwise provided in this article**, whenever an

24 agency submits a rule to the attorney general, the governor, or the

25 publisher under this chapter, the agency shall also submit a copy of the

26 full text of each matter incorporated by reference under subsection (a)

27 into the rule, other than the following:

28 (1) An Indiana statute or rule.

29 (2) A form or instructions for a form numbered by the Indiana

30 archives and record administration under IC 5-15-5.1-6.

31 (3) The source of a statement that is quoted or paraphrased in

32 full in the rule.

33 (4) Any matter that has been previously filed with the:

34 (A) secretary of state before July 1, 2006; or

35 (B) publisher after June 30, 2006.

36 (5) Any matter referred to in subsection (c) as a matter that is

37 directly or indirectly referred to in a primary matter.

38 (e) An agency may comply with subsection (d) by submitting a

39 paper or an electronic copy of the full text of the matter incorporated

40 by reference.

41 SECTION 14. IC 4-22-2-22.5, AS AMENDED BY P.L.72-2014,

42 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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1 JULY 1, 2023]; Sec. 22.5. (a) This section applies to a rule that an
 2 agency intends to:
 3 (1) adopt under sections ~~24~~ 23 through 36 of this chapter **or**
 4 **section 37.2 of this chapter;**
 5 (2) **adopt under IC 13-14-9; or**
 6 (3) **readopt under IC 4-22-2.6.**
 7 (b) As used in this section, "pending rulemaking action" means
 8 any rulemaking action in which:
 9 (1) either:
 10 (A) a notice of ~~intent~~ **a public comment period** has been
 11 published under section 23 **or 37.2** of this chapter; ~~or~~
 12 (B) a rulemaking action has been commenced under
 13 IC 13-14-9; ~~and or~~
 14 **(C) a rulemaking action has been commenced under**
 15 **IC 4-22-2.6; and**
 16 (2) the rule has not become effective under section 36 of this
 17 chapter.
 18 (c) Each agency shall maintain a current rulemaking docket that
 19 is indexed.
 20 (d) A current rulemaking docket must list each pending
 21 rulemaking action. The docket must state or contain:
 22 (1) the subject matter of the proposed rule;
 23 (2) notices related to the proposed rule, or links to the Indiana
 24 Register where these notices may be viewed;
 25 (3) how comments may be made;
 26 (4) the time within which comments may be made;
 27 (5) where comments and the agency's written response to those
 28 comments may be inspected;
 29 (6) the date, time, and place where a public hearing required
 30 under:
 31 (A) section 26 of this chapter; or
 32 (B) IC 13-14-9;
 33 will be held;
 34 (7) a description of relevant scientific and technical findings
 35 related to the proposed rule, if applicable; and
 36 (8) a reasonable estimate of the timetable for action, updated
 37 periodically as circumstances change, if necessary.
 38 (e) The agency shall maintain the rulemaking docket on the
 39 agency's ~~Internet web site.~~ **website.** The information must be in an
 40 open format that can be easily searched and downloaded. Access to the
 41 docket shall, to the extent feasible and permitted by law, provide an
 42 opportunity for public comment on the pertinent parts of the

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1 rulemaking docket, including relevant scientific and technical findings.
2 Upon request, the agency shall provide a written rulemaking docket.

3 SECTION 15. IC 4-22-2-22.7 IS ADDED TO THE INDIANA
4 CODE AS A NEW SECTION TO READ AS FOLLOWS
5 [EFFECTIVE JULY 1, 2023]: **Sec. 22.7. (a) Before complying with**
6 **section 22.8 of this chapter, an agency shall conduct a regulatory**
7 **analysis for the proposed rule that complies with the requirements**
8 **of this section.**

9 (b) The office of management and budget shall set standards
10 for the criteria, analytical method, treatment technology,
11 economic, fiscal, and other background data to be used by an
12 agency in the regulatory analysis. The regulatory analysis must be
13 submitted in a form that can be easily loaded into commonly used
14 business analysis software and published in the Indiana Register
15 using the format jointly developed by the publisher, the office of
16 management and budget, and the budget agency. The office of
17 management and budget may provide more stringent requirements
18 for rules with fiscal impacts and costs above a threshold amount
19 determined by the office of management and budget.

20 (c) At a minimum, the regulatory analysis must include
21 findings and any supporting data, studies, or analyses prepared for
22 a rule that demonstrate compliance with the following:

- 23 (1) The cost benefit requirements in IC 4-3-22-13.
- 24 (2) Each of the standards in sections 19.5 and (if applicable)
- 25 19.6 of this chapter.
- 26 (3) If applicable, the requirements for fees, fines, and civil
- 27 penalties in section 19.6 of this chapter.
- 28 (4) The annual economic impact on small businesses
- 29 statement required under IC 4-22-2.1-5.
- 30 (5) If applicable, the information required under
- 31 IC 13-14-9-4.
- 32 (6) Any requirement under any other law to conduct an
- 33 analysis of the cost, benefits, economic impact, or fiscal
- 34 impact of a rule, if applicable.

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

- 37 (1) imposed on a regulated entity under the rule; and
- 38 (2) not expressly required by:
 - 39 (A) the statute authorizing the agency to adopt the rule;
 - 40 or
 - 41 (B) any other state or federal law.

42 The statement required under this subsection must include a

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1 reference to any data, studies, or analyses relied upon by the
 2 agency in determining that the imposition of the requirement or
 3 cost is necessary.

4 (e) If an agency has made a good faith effort to comply with
 5 this section, a rule is not invalid solely because the regulatory
 6 analysis for the proposed rule is insufficient or inaccurate.

7 SECTION 16. IC 4-22-2-22.8 IS ADDED TO THE INDIANA
 8 CODE AS A NEW SECTION TO READ AS FOLLOWS
 9 [EFFECTIVE JULY 1, 2023]: Sec. 22.8. (a) After conducting a
 10 regulatory analysis under section 22.7 of this chapter, if an agency
 11 elects to adopt a rule subject to section 23 of this chapter or
 12 IC 13-14-9, the agency shall submit a request to the budget agency
 13 and the office of management and budget to authorize
 14 commencement of the public comment periods under this chapter
 15 or IC 13-14-9 (as applicable). The request must include the
 16 following:

17 (1) A general description of the subject matter of the
 18 proposed rule.

19 (2) The full text of the proposed rule (including a copy of any
 20 matter incorporated by reference under section 21 of this
 21 chapter) in the form required by the publisher, including
 22 citations to any related authorizing and affected Indiana
 23 statutes.

24 (3) The analysis, including supporting data, prepared under
 25 section 22.7 of this chapter.

26 (4) Any other information required by the office of
 27 management and budget.

28 (b) The budget agency and the office of management and
 29 budget shall expedite the review of the request to adopt a rule. The
 30 budget agency and the office of management and budget may do
 31 the following:

32 (1) Return the request to the agency with a statement
 33 describing any additional information needed to authorize or
 34 disapprove further rulemaking actions on one (1) or more of
 35 the rules in the request.

36 (2) Authorize the commencement of the public comment
 37 periods on one (1) or more of the rules in the request with or
 38 without changes.

39 (3) Disapprove commencement of the public comment
 40 periods on one (1) or more of the rules with a statement of
 41 reasons for the disapproval.

42 (c) If an agency has requested authorization for more than one

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1 (1) rule in the same request, the budget agency and the office of
 2 management and budget may make separate determinations with
 3 respect to some or all of the rules in the request. Approval of a
 4 request shall be treated as a determination that the review
 5 conducted and findings made by the agency comply with the
 6 requirements of section 22.7 of this chapter and this section. The
 7 budget agency and the office of management and budget may not
 8 approve any part of a proposed rule that adds or amends language
 9 to increase or expand application of a fee, fine, or civil penalty or
 10 a schedule of fees, fines, or civil penalties before submitting the
 11 proposed rule to the budget committee for review.

12 (d) Notice of the determination shall be provided to the agency
 13 in an electronic format required by the publisher. The budget
 14 agency and the office of management and budget may return to the
 15 agency any copy of a matter incorporated by reference under
 16 section 21 of this chapter that was submitted with the request.

17 (e) If an agency revises a proposed rule after the budget
 18 agency and the office of management and budget authorize
 19 commencement of the public comment periods, the agency must
 20 obtain a new notice of determination under subsection (d). The
 21 agency shall resubmit to the budget agency and the office of
 22 management and budget the revised proposed rule and a revised
 23 regulatory analysis with sufficient information for the budget
 24 agency and the office of management and budget to determine the
 25 impact the revisions have on the regulatory analysis previously
 26 reviewed by the budget agency and the office of management and
 27 budget. After obtaining a new notice of determination, the agency
 28 shall submit to the publisher the new notice of determination, the
 29 revised proposed rule, and the revised regulatory analysis.

30 SECTION 17. IC 4-22-2-23, AS AMENDED BY P.L.152-2012,
 31 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2023]: Sec. 23. (a) This section does not apply to rules
 33 adopted under IC 4-22-2-37.1.

34 (b) (a) At least twenty-eight (28) days before an agency notifies
 35 the public of the agency's intention to adopt a rule under section 24 of
 36 this chapter, the agency shall notify the public of its intention to adopt
 37 a rule by publishing a notice of intent to adopt a rule in the Indiana
 38 Register. An agency shall provide notice in the Indiana Register of
 39 the first public comment period required by this section. To
 40 publish notice of the first comment period in the Indiana Register,
 41 the agency must submit the following to the publisher:

42 (1) A statement of the date, time, and place at which the

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1 hearing required by section 26 of this chapter will be
 2 convened, including information for how to attend the public
 3 hearing remotely.

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

7 (3) The latest version of the regulatory analysis submitted to
 8 the budget agency and the office of management and budget
 9 under section 22.8 of this chapter.

10 (4) The determination of the budget agency and the office of
 11 management and budget authorizing commencement of the
 12 public comment periods.

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

18 (6) The notice required under subsection (b).

19 (b) The publication notice of the first comment period must
 20 include the following:

21 (1) A general description of the subject matter of the
 22 proposed rule.

23 (2) An overview of the intent and scope of the proposed rule and
 24 the statutory authority for the rule.

25 (3) The latest version of the regulatory analysis submitted to
 26 the budget agency and the office of management and budget
 27 under section 22.8 of this chapter, excluding any appendices
 28 containing any data, studies, or analysis referenced in the
 29 regulatory analysis.

30 (4) Information concerning where, when, and how a person
 31 may submit written comments on the proposed rule,
 32 including contact information concerning the small business
 33 regulatory coordinator required by section 28.1 of this
 34 chapter.

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

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

41 (7) An indication that, if the agency does not receive any
 42 substantive comments during the comment period or public

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1 hearing, the agency may adopt a rule that is the same as or
2 does not substantially differ from the text of the proposed
3 rule published under this section.

4 **Inadequacy or insufficiency of the published description or**
5 **regulatory analysis published under this section does not invalidate**
6 **a rulemaking action.**

7 (c) The requirement to publish a notice of intent to adopt a rule
8 under subsection (b) does not apply to rulemaking under IC 13-14-9.

9 (d) In addition to the procedures required by this article, an agency
10 may solicit comments from the public on the need for a rule, the
11 drafting of a rule, or any other subject related to a rulemaking action,
12 including members of the public who are likely to be affected because
13 they are the subject of the potential rulemaking or are likely to benefit
14 from the potential rulemaking. The procedures that the agency may use
15 include the holding of conferences and the inviting of written
16 suggestions, facts, arguments, or views.

17 (e) The agency shall prepare a written response that contains a
18 summary of the comments received during any part of the rulemaking
19 process. The written response is a public document. The agency shall
20 make the written response available to interested parties upon request.

21 (c) Although the agency may comply with the publication
22 requirements of this section on different days, the agency must
23 comply with all of the publication requirements of this section at
24 least thirty (30) days before the public hearing required by section
25 26 of this chapter is convened.

26 (d) The publisher shall review materials submitted under this
27 section and determine the date that the publisher intends to publish
28 the text of the proposed rule and the notice in the Indiana Register.
29 If the submitted material complies with this section, the publisher
30 shall establish the intended publication date, assign a document
31 control number to the proposed rule, and provide a written or an
32 electronic mail authorization to proceed to the agency. The
33 publisher shall publish the following in the Indiana Register on the
34 intended publication date:

35 (1) The notice of the first comment period, including any
36 information required under IC 13-14-9-4 (if applicable).

37 (2) The full text of the agency's proposed rule (excluding the
38 full text of a matter incorporated by reference under section
39 21 of this chapter).

40 SECTION 18. IC 4-22-2-23.1, AS AMENDED BY P.L.123-2006,
41 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 2023]: Sec. 23.1. (a) This section and section 19(b) of this

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chapter do not apply to rules adopted under IC 4-22-2-37.1.

(b) Before or after an agency notifies the public of its intention to adopt a rule under section 24 of this chapter; **submits a request to the budget agency and the office of management and budget under section 22.8 of this chapter**, the agency may solicit comments from all or any segment of the public on the need for a rule, the drafting of a rule, or any other subject related to a rulemaking action. The procedures that the agency may use include the holding of conferences and the inviting of written suggestions, facts, arguments, or views. An agency's failure to consider comments received under this section does not invalidate a rule subsequently adopted.

SECTION 19. IC 4-22-2-24, AS AMENDED BY P.L.1-2006, SECTION 71, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 24. (a) An agency shall notify the public of its intention to adopt a rule by complying with the publication requirements in subsections (b) and (c):

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

(a) If:

- (1) an agency receives substantive comments during the first comment period or the public hearing under section 23 of this chapter; or
- (2) the rule establishes a requirement or limitation that is more stringent than an applicable federal requirement or limitation;

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

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

- (1) The full text of the agency's proposed rule (excluding the full text of a matter incorporated by reference under section 21 of this chapter) to be published once in the Indiana Register. To publish the notice and proposed rule in the Indiana Register, the agency shall submit the text to the publisher in accordance with subsection (g). The agency shall submit the rule in the form required by section 20 of this chapter. **and with The agency also**

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1 shall submit the documents required by section 21 of this
 2 chapter (if the agency has not previously provided the
 3 publisher with the documents). The publisher shall determine
 4 the number of copies of the rule and other documents to be
 5 submitted under this subsection: **subdivision.**

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

7 ~~(d)~~ **(c)** The agency shall include the following in the **second**
 8 **comment period** notice required by subsections (b) and ~~(c)~~: **published**
 9 **in the Indiana Register:**

10 (1) A statement of the date, time, and place at which the public
 11 hearing required by section 26 of this chapter will be convened,
 12 **including information for how to attend the hearing**
 13 **remotely.**

14 (2) A general description of the subject matter of the proposed
 15 rule.

16 ~~(3)~~ **In a notice published after June 30, 2005, a statement**
 17 **justifying any requirement or cost that is:**

- 18 (A) imposed on a regulated entity under the rule; and
- 19 (B) not expressly required by:
 - 20 (i) the statute authorizing the agency to adopt the rule;
 - 21 or
 - 22 (ii) any other state or federal law.

23 The statement required under this subdivision must include a
 24 reference to any data, studies, or analyses relied upon by the
 25 agency in determining that the imposition of the requirement or
 26 cost is necessary.

27 ~~(4)~~ **an explanation that:**

- 28 (A) the proposed rule; and
- 29 (B) any data, studies, or analysis referenced in a statement
 30 under subdivision ~~(3)~~;

31 may be inspected and copied at the office of the agency.

32 **(3) A summary of the written comments received by the**
 33 **agency during the first comment period and a summary of**
 34 **the response of the agency to written comments submitted**
 35 **under section 23 of this chapter during the first public**
 36 **comment period.**

37 **(4) Either a statement indicating that no changes in the**
 38 **regulatory analysis have been made from the version of the**
 39 **regulatory analysis published under section 23 of this**
 40 **chapter or the latest version of the regulatory analysis**
 41 **(excluding any appendices containing any data, studies, or**
 42 **analysis referenced in the regulatory analysis) submitted to**

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1 the budget agency and the office of management and budget
2 under section 22.8 of this chapter, if any changes have been
3 made in the regulatory analysis after submitting the material
4 to the publisher under section 23 of this chapter.
5 (5) An explanation of any differences between the text of the
6 proposed rule published for the first comment period under
7 section 23 of this chapter and the text of the proposed rule
8 published for the second comment period under this section.
9 (6) Information concerning where, when, and how a person
10 may submit written comments on the proposed rule,
11 including contact information concerning the small business
12 regulatory coordinator required by section 28.1 of this
13 chapter.
14 (7) Information concerning where, when, and how a person
15 may inspect and copy the regulatory analysis and any data,
16 studies, or analyses referenced in a regulatory analysis
17 referenced in subdivision (4).
18 (8) Information concerning where, when, and how a person
19 may inspect any documents incorporated by reference into
20 the proposed rule under section 21 of this chapter.
21 (9) An indication that the notice is for the second of two (2)
22 thirty (30) day periods in which the public may comment on
23 the proposed rule and that following the second comment
24 period the agency may adopt a version of the proposed rule
25 that is the same as or does not substantially differ from the
26 text of the proposed rule published under this section.
27 However, inadequacy or insufficiency of the subject matter description
28 under subdivision (2) or a statement of justification under subdivision
29 (3) or regulatory analysis in a notice published under this section
30 does not invalidate a rulemaking action.
31 (e) (d) Although the agency may comply with the publication
32 requirements in this section on different days, the agency must comply
33 with all of the publication requirements in this section at least
34 twenty-one (21) thirty (30) days before the public hearing required by
35 section 26 of this chapter is convened.
36 (f) This section does not apply to the solicitation of comments
37 under section 23 of this chapter.
38 (g) (e) The publisher shall review materials submitted under this
39 section and determine the date that the publisher intends to include the
40 material in the Indiana Register. After:
41 (1) establishing the intended publication date; and
42 (2) receiving the public hearing information specified in

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1 subsection (d) from the agency;
 2 the publisher shall **If the submitted material complies with this**
 3 **section, the publisher shall establish the intended publication date,**
 4 **assign a document control number to the proposed rule, and**
 5 provide a written or an electronic mail authorization to proceed to the
 6 agency. **The publisher shall publish the following in the Indiana**
 7 **Register on the intended publication date:**

8 (1) **The notice of the second comment period, including any**
 9 **information required under IC 13-14-9-4 (if applicable).**

10 (2) **The full text of the agency's proposed rule (excluding the**
 11 **full text of a matter incorporated by reference under section**
 12 **21 of this chapter).**

13 SECTION 20. IC 4-22-2-25, AS AMENDED BY P.L.5-2015,
 14 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2023]: Sec. 25. (a) An agency has one (1) year from the date
 16 that it publishes a notice of intent to adopt a rule in the Indiana Register
 17 ~~under section 23 of this chapter to comply with sections 26 through 33~~
 18 **of this chapter of the first public comment period under section 23**
 19 **of this chapter to comply with sections 23 through 33 of this**
 20 **chapter** and obtain the approval or deemed approval of the governor.
 21 If an agency determines that a rule cannot be adopted within one (1)
 22 year after the publication of the notice of ~~intent to adopt a rule~~ **the first**
 23 **public comment period** under section 23 of this chapter, the agency
 24 shall, before the two hundred fiftieth day following the publication of
 25 the notice of ~~intent to adopt a rule~~ **the first public comment period**
 26 under section 23 of this chapter, notify the publisher by electronic
 27 means:

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

30 (2) the expected date the rule will be approved or deemed
 31 approved by the governor or withdrawn under section 41 of this
 32 chapter.

33 (b) If a rule is not approved before the later of:

34 (1) one (1) year after the agency publishes notice of ~~intent to~~
 35 ~~adopt the rule~~ **the first public comment period** under section 23
 36 of this chapter; or

37 (2) the expected date contained in a notice concerning the rule
 38 that is provided to the publisher under subsection (a);

39 a later approval or deemed approval is ineffective, and the rule may
 40 become effective only through another rulemaking action initiated
 41 under this chapter.

42 SECTION 21. IC 4-22-2-26 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 26. (a) After the notices
2 and the text of an agency's proposed rule are published under ~~section~~
3 **sections 23 and (if applicable) 24** of this chapter, the agency shall
4 conduct a public hearing on the proposed rule.

5 (b) The agency shall convene the public hearing on the date and
6 at the time and place stated in its notices **and include an option for**
7 **remote attendance.**

8 (c) The agency may conduct the public hearing in any informal
9 manner that allows for an orderly presentation of comments and avoids
10 undue repetition. However, the agency shall afford any person
11 attending the public hearing an adequate opportunity to comment on
12 the agency's proposed rule through the presentation of oral and written
13 facts or argument.

14 (d) The agency may recess the public hearing and reconvene it on
15 a different date or at a different time or place by:

16 (1) announcing the date, time, and place of the reconvened
17 public hearing in the original public hearing before its recess;
18 and

19 (2) recording the announcement in the agency's record of the
20 public hearing.

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

23 SECTION 22. IC 4-22-2-27 IS AMENDED TO READ AS
24 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 27. The individual or
25 group of individuals who will finally adopt the rule under section 29 of
26 this chapter shall fully consider comments received **by the agency**
27 **during each comment period and comments received** at the public
28 **hearing hearings** required by ~~section~~ **sections 23, 24, and 26** of this
29 chapter and may consider any other information before adopting the
30 rule. Attendance at the public hearing or review of a written record or
31 summary of the public hearing is sufficient to constitute full
32 consideration.

33 SECTION 23. IC 4-22-2-27.5 IS ADDED TO THE INDIANA
34 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
35 [EFFECTIVE JULY 1, 2023]: **Sec. 27.5. In addition to the**
36 **information submitted to the attorney general under section 31 of**
37 **this chapter, to the governor under section 33 of this chapter, and**
38 **to the publisher under section 35 of this chapter, an agency shall**
39 **submit to the attorney general, the governor, and the publisher a**
40 **summary of the comments received by the agency during each**
41 **comment period and public hearing under sections 23, 24, and 26**
42 **of this chapter or IC 13-14-9 and a summary of the response of the**

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1 **agency to the comments. The publisher shall publish the**
2 **summaries with the final adopted and approved rule.**

3 SECTION 24. IC 4-22-2-28, AS AMENDED BY P.L.237-2017,
4 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2023]: Sec. 28. (a) The following definitions apply throughout
6 this section:

7 (1) "Ombudsman" refers to the small business ombudsman
8 designated under IC 5-28-17-6.

9 (2) "Total estimated economic impact" means the direct annual
10 economic impact of a rule on all regulated persons after the rule
11 is fully implemented under subsection (g).

12 (b) The ombudsman:

13 (1) shall review a proposed rule that

14 ~~(A) imposes requirements or costs on small businesses (as~~
15 ~~defined in IC 4-22-2.1-4); and~~

16 ~~(B) is referred to the ombudsman by an agency under~~
17 ~~IC 4-22-2.1-5(e); and~~

18 (2) may review a proposed rule that imposes requirements or
19 costs on businesses other than small businesses (as defined in
20 IC 4-22-2.1-4).

21 After conducting a review under subdivision (1) or (2), the ombudsman
22 may suggest alternatives to reduce any regulatory burden that the
23 proposed rule imposes on small businesses or other businesses. The
24 agency that intends to adopt the proposed rule shall respond in writing
25 to the ombudsman concerning the ombudsman's comments or
26 suggested alternatives before adopting the proposed rule under section
27 29 of this chapter.

28 (c) Subject to subsection (e) and not later than fifty (50) days
29 before the public hearing for a proposed rule required by section 26 of
30 this chapter, an agency shall submit the proposed rule to the office of
31 management and budget for a review under subsection (d); if the
32 agency proposing the rule determines that the rule will have a total
33 estimated economic impact greater than five hundred thousand dollars
34 (\$500,000) on all regulated persons: In determining the total estimated
35 economic impact under this subsection, the agency shall consider any
36 applicable information submitted by the regulated persons affected by
37 the rule. To assist the office of management and budget in preparing
38 the fiscal impact statement required by subsection (d), the agency shall
39 submit, along with the proposed rule, the data used and assumptions
40 made by the agency in determining the total estimated economic
41 impact of the rule.

42 (d) Except as provided in subsection (e); before the adoption of the

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1 rule; and not more than forty-five (45) days after receiving a proposed
 2 rule under subsection (c); the office of management and budget shall
 3 prepare, using the data and assumptions provided by the agency
 4 proposing the rule; along with any other data or information available
 5 to the office of management and budget; a fiscal impact statement
 6 concerning the effect that compliance with the proposed rule will have
 7 on:

- 8 (1) the state; and
- 9 (2) all persons regulated by the proposed rule.

10 The fiscal impact statement must contain the total estimated economic
 11 impact of the proposed rule and a determination concerning the extent
 12 to which the proposed rule creates an unfunded mandate on a state
 13 agency or political subdivision. The fiscal impact statement is a public
 14 document. The office of management and budget shall make the fiscal
 15 impact statement available to interested parties upon request and to the
 16 agency proposing the rule. The agency proposing the rule shall
 17 consider the fiscal impact statement as part of the rulemaking process
 18 and shall provide the office of management and budget with the
 19 information necessary to prepare the fiscal impact statement; including
 20 any economic impact statement prepared by the agency under
 21 IC 4-22-2.1-5. The office of management and budget may also receive
 22 and consider applicable information from the regulated persons
 23 affected by the rule in preparation of the fiscal impact statement.

24 (e) With respect to a proposed rule subject to IC 13-14-9:

- 25 (1) the department of environmental management shall give
 26 written notice to the office of management and budget of the
 27 proposed date of preliminary adoption of the proposed rule not
 28 less than sixty-six (66) days before that date; and
- 29 (2) the office of management and budget shall prepare the fiscal
 30 impact statement referred to in subsection (d) not later than
 31 twenty-one (21) days before the proposed date of preliminary
 32 adoption of the proposed rule.

33 (f) In determining whether a proposed rule has a total estimated
 34 economic impact greater than five hundred thousand dollars
 35 (\$500,000); the agency proposing the rule shall consider the impact of
 36 the rule on any regulated person that already complies with the
 37 standards imposed by the rule on a voluntary basis.

38 (g) For purposes of this section; a rule is fully implemented after:

- 39 (1) the conclusion of any phase-in period during which:
 - 40 (A) the rule is gradually made to apply to certain regulated
 41 persons; or
 - 42 (B) the costs of the rule are gradually implemented; and

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1 (2) the rule applies to all regulated persons that will be affected
 2 by the rule.

3 In determining the total estimated economic impact of a proposed rule
 4 under this section, the agency proposing the rule shall consider the
 5 annual economic impact on all regulated persons beginning with the
 6 first twelve (12) month period after the rule is fully implemented. The
 7 agency may use actual or forecasted data and may consider the actual
 8 and anticipated effects of inflation and deflation. The agency shall
 9 describe any assumptions made and any data used in determining the
 10 total estimated economic impact of a rule under this section.

11 (h) An agency shall provide the legislative council in an electronic
 12 format under IC 5-14-6 with any analysis, data, and description of
 13 assumptions submitted to the office of management and budget under
 14 this section or section 40 of this chapter at the same time the agency
 15 submits the information to the office of management and budget. The
 16 office of management and budget shall provide the legislative council
 17 in an electronic format under IC 5-14-6 any fiscal impact statement and
 18 related supporting documentation prepared by the office of
 19 management and budget under this section or section 40 of this chapter
 20 at the same time the office of management and budget provides the
 21 fiscal impact statement to the agency proposing the rule. Information
 22 submitted under this subsection must identify the rule to which the
 23 information is related by document control number assigned by the
 24 publisher.

25 (i) An agency shall provide the legislative council in an electronic
 26 format under IC 5-14-6 with any economic impact or fiscal impact
 27 statement, including any supporting data, studies, or analysis, prepared
 28 for a rule proposed by the agency or subject to readoption by the
 29 agency to comply with:

30 (1) a requirement in section 19.5 of this chapter to minimize the
 31 expenses to regulated entities that are required to comply with
 32 the rule;

33 (2) a requirement in section 24 of this chapter to publish a
 34 justification of any requirement or cost that is imposed on a
 35 regulated entity under the rule;

36 (3) a requirement in IC 4-22-2.1-5 to prepare a statement that
 37 describes the annual economic impact of a rule on all small
 38 businesses after the rule is fully implemented;

39 (4) a requirement in IC 4-22-2.5-3.1 to conduct a review to
 40 consider whether there are any alternative methods of achieving
 41 the purpose of the rule that are less costly or less intrusive, or
 42 that would otherwise minimize the economic impact of the

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1 proposed rule on small businesses;
 2 (5) a requirement in IC 13-14-9-3 or IC 13-14-9-4 to publish
 3 information concerning the fiscal impact of a rule or alternatives
 4 to a rule subject to these provisions; or
 5 (6) a requirement under any other law to conduct an analysis of
 6 the cost, economic impact, or fiscal impact of a rule;
 7 regardless of whether the total estimated economic impact of the
 8 proposed rule is more than five hundred thousand dollars (\$500,000);
 9 as soon as practicable after the information is prepared. Information
 10 submitted under this subsection must identify the rule to which the
 11 information is related by document control number assigned by the
 12 publisher.

13 SECTION 25. IC 4-22-2-28.1, AS AMENDED BY P.L.237-2017,
 14 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2023]: Sec. 28.1. (a) This section applies to the following:

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

19 (2) A rule for which:

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

21 (B) an appropriate later notice for circumstances described
 22 in subsection (g);

23 is published by the department of environmental management
 24 after June 30, 2006.

25 (b) (a) As used in this section, **The following definitions apply**
 26 **throughout this section:**

27 (1) "Coordinator" refers to the small business regulatory
 28 coordinator assigned to a rule by an agency under subsection (e);

29 (b).

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

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

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

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1 rule. Subject to subsection (f):

2 (1) in the case of a proposed rule, the notice of intent to adopt
3 the rule **The first comment period notice** published under
4 section 23 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
34 program established under IC 13-28-5; and

35 (B) the name, address, telephone number, and electronic
36 mail address of the ombudsman for small business
37 designated under 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
41 voluntary compliance established by IC 13-28-1-1 to coordinate the
42 provision of services required under subsection (h) and IC 13-28-3. If

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

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

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

19 (1) Any requirements imposed by the rule, including any
 20 reporting, record keeping, or accounting requirements.

21 (2) How the agency determines or measures compliance with the
 22 rule, including any deadlines for action by regulated entities.

23 (3) Any penalties, sanctions, or fines imposed for noncompliance
 24 with the rule.

25 (4) Any other concerns of small businesses with respect to the
 26 rule, including the agency's application or enforcement of the
 27 rule in particular situations. However, in the case of a rule
 28 adopted ~~under IC 13-14-9~~, **by the department of**
 29 **environmental management or a board listed in**
 30 **IC 13-14-9-1**, the coordinator assigned to the rule may refer a
 31 small business with concerns about the application or
 32 enforcement of the rule in a particular situation to the
 33 ombudsman designated under IC 13-28-3-2 or, if applicable,
 34 under IC 13-28-5-2(3).

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

42 (1) for public inspection and copying at the offices of the agency

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1 under IC 5-14-3; and
 2 (2) electronically through electronic gateway access.
 3 ~~(j)~~ **(f)** The coordinator assigned to a rule ~~under subsection (e)~~ shall
 4 keep a record of all comments, questions, and complaints received
 5 from small businesses with respect to the rule. The coordinator shall
 6 deliver the record, along with any accompanying documents submitted
 7 by small businesses, to the director:
 8 (1) not later than ten (10) days after the date on which the rule is
 9 submitted to the publisher under section 35 of this chapter; and
 10 (2) before July 15 of each year during which the rule remains in
 11 effect.
 12 The coordinator and the director shall keep confidential any
 13 information concerning a small business to the extent that the
 14 information is exempt from public disclosure under IC 5-14-3-4.
 15 ~~(k)~~ **(g)** Not later than November 1 of each year, the director shall:
 16 (1) compile the records received from all of the agency's
 17 coordinators under subsection ~~(j)~~; **(f)**;
 18 (2) prepare a report that sets forth:
 19 (A) the number of comments, complaints, and questions
 20 received by the agency from small businesses during the
 21 most recent state fiscal year, categorized by the subject
 22 matter of the rules involved;
 23 (B) the number of complaints or questions reported under
 24 clause (A) that were resolved to the satisfaction of the
 25 agency and the small businesses involved;
 26 (C) the total number of staff serving as coordinators under
 27 this section during the most recent state fiscal year;
 28 (D) the agency's costs in complying with this section during
 29 the most recent state fiscal year; and
 30 (E) the projected budget required by the agency to comply
 31 with this section during the current state fiscal year; and
 32 (3) deliver the report to the legislative council in an electronic
 33 format under IC 5-14-6 and to the small business ombudsman
 34 designated under IC 5-28-17-6.
 35 SECTION 26. IC 4-22-2-28.2, AS AMENDED BY P.L.133-2012,
 36 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2023]: Sec. 28.2. (a) This section applies to a violation
 38 described in subsection (c) that occurs after June 30, 2005. However,
 39 in the case of a violation of a rule adopted under IC 13-14-9 by the
 40 department of environmental management or the board (as defined in
 41 IC 13-13-8-1), the procedures set forth in IC 13-30-4-3 and IC 13-30-7
 42 apply instead of this section.

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

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

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

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

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

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

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

24 (2) The violation resulted in a substantial economic benefit that
25 afforded the small business a clear advantage over the small
26 business's competitors.

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

29 (e) Information that a small business provides under this section,
30 including actions and documents that identify or describe the small
31 business, to an agency in providing notice of the small business's actual
32 or potential violation of a rule adopted by the agency is confidential,
33 unless a clear and immediate danger to the public health, safety, or
34 welfare or to the environment exists. Information described in this
35 subsection may not be made available for use by the agency for
36 purposes other than the purposes of this section without the consent of
37 the small business.

38 (f) Voluntary notice of an actual or a potential violation of a rule
39 that is provided by a small business under subsection (c) is not
40 admissible as evidence in a proceeding, other than an agency
41 proceeding, to prove liability for the rule violation or the effects of the
42 rule violation.

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1 SECTION 27. IC 4-22-2-29, AS AMENDED BY P.L.237-2017,
 2 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2023]: Sec. 29. (a) As used in this section, "small business
 4 ombudsman" refers to the small business ombudsman designated under
 5 IC 5-28-17-6.

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

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

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

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

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

23 (c) **Subject to IC 13-14-9-4.5 (if applicable)**, an agency may not
 24 adopt a rule that substantially differs from the version or versions of the
 25 proposed rule or rules published in the Indiana Register under section
 26 **23 or 24** of this chapter, **or IC 13-14-9-14 (as applicable)**, unless it is
 27 a logical outgrowth of any proposed rule as supported by any written
 28 **and public hearing** comments submitted:

29 (1) during the public comment period; or

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

32 SECTION 28. IC 4-22-2-31, AS AMENDED BY P.L.123-2006,
 33 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 34 JULY 1, 2023]: Sec. 31. After an agency has complied with section 29
 35 of this chapter, or ~~with IC 13-14-9-9(1) or IC 13-14-9-9(2)~~, **adopted**
 36 **the rule in conformity with IC 13-14-9**, as applicable, the agency
 37 shall submit its rule to the attorney general for approval. The agency
 38 shall submit the following to the attorney general:

39 (1) The rule in the form required by section 20 of this chapter.

40 (2) The documents required by section 21 of this chapter.

41 (3) Written authorization to proceed issued by the publisher
 42 under ~~section 24(g)~~ **sections 23 and 24** of this chapter **or**



1 **IC 13-14-9-4, IC 13-14-9-5, or IC 13-14-9-14, as applicable.**

2 (4) Any other documents specified by the attorney general.

3 The attorney general may require the agency to submit any supporting
4 documentation that the attorney general considers necessary for the
5 attorney general's review under section 32 of this chapter. The agency
6 may submit any additional supporting documentation the agency
7 considers necessary.

8 SECTION 29. IC 4-22-2-32, AS AMENDED BY P.L.1-2006,
9 SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2023]: Sec. 32. (a) The attorney general shall review each rule
11 submitted under section 31 of this chapter for legality.

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

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

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

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

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

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

31 (1) has been adopted without statutory authority;

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

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

35 (4) violates another law.

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

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

41 (1) disapprove the rule; or

42 (2) return the rule to the agency without disapproving the rule.

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(e) If the attorney general returns a rule under subsection (d)(2), the agency may bring the rule into compliance with section 20(a)(2) of this chapter and resubmit the rule to the attorney general without readopting the rule.

(f) If the attorney general determines in the course of the review conducted under subsection (b) that a rule may constitute a taking of property, the attorney general shall advise the following:

- (1) The governor.
- (2) The agency head.

Advice given under this subsection shall be regarded as confidential attorney-client communication.

(g) The attorney general has forty-five (45) days from the date that an agency:

- (1) submits a rule under section 31 of this chapter; or
- (2) resubmits a rule under subsection (e);

to approve or disapprove the rule. If the attorney general neither approves nor disapproves the rule, the rule is deemed approved, and the agency may submit it to the governor for approval under section 33 of this chapter without the approval of the attorney general.

(h) For rules adopted under IC 13-14-9, the attorney general:

- (1) shall determine whether the rule adopted by the agency under ~~IC 13-14-9-9(2)~~ **is a IC 13-14-9 meets the appropriate substantial similarity or logical outgrowth of the proposed rule as published under IC 13-14-9-5(a)(2) and of testimony presented at the board meeting held under IC 13-14-9-5(a)(3); standard under section 29(c) of this chapter;** and

(2) may disapprove a rule under this section only if the rule:

- (A) has been adopted without statutory authority;
- (B) has been adopted without complying with this chapter or IC 13-14-9;
- (C) ~~is not a logical outgrowth of the proposed rule as published under IC 13-14-9-5(a)(2) and of the testimony presented at the board meeting held under IC 13-14-9-5(a)(3);~~ **meets the appropriate substantial similarity or logical outgrowth standard under section 29(c) of this chapter;** or
- (D) violates another law.

SECTION 30. IC 4-22-2-37.1, AS AMENDED BY P.L.140-2013, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 37.1. (a) The following do not apply to a rule adopted under this section:

- (1) Sections ~~24~~ **23** through ~~36~~ **27** of this chapter

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1 ~~(2)~~ or IC 13-14-9 (as applicable).
 2 **(2) Sections 28 through 36 of this chapter.**
 3 **The amendments to this section made in the 2023 regular session**
 4 **of the general assembly apply to provisional rules that are accepted**
 5 **for filing by the publisher of the Indiana Register after June 30,**
 6 **2023, regardless of whether the adopting agency initiated official**
 7 **action to adopt the rule by the name of emergency rule or**
 8 **provisional rule before July 1, 2023. An action taken before July 1,**
 9 **2023, in conformity with this section (as effective after June 30,**
 10 **2023) is validated to the same extent as if the action was taken after**
 11 **June 30, 2023.**

12 (b) ~~An agency may adopt a rule may be adopted under on a~~
 13 ~~subject for which the agency has rulemaking authority using the~~
 14 ~~procedures in this section if a statute delegating authority to an agency~~
 15 ~~to adopt rules authorizes adoption of such a rule:~~
 16 ~~(1) under this section; or~~
 17 ~~(2) in the manner provided by this section.~~

18 **the governor finds that the agency proposing to adopt the rule has**
 19 **demonstrated to the satisfaction of the governor that use of**
 20 **provisional rulemaking procedures under this section is necessary**
 21 **to avoid:**

- 22 **(1) an imminent and substantial peril to public health, safety,**
 23 **or welfare;**
- 24 **(2) an imminent and material loss of federal funds for an**
 25 **agency program;**
- 26 **(3) an imminent and material deficit;**
- 27 **(4) an imminent and substantial violation of a state or federal**
 28 **law or the terms of a federal agreement or program;**
- 29 **(5) injury to the business or interests of the people or any**
 30 **public utility of Indiana as determined under IC 8-1-2-113;**
- 31 **(6) an imminent and substantial peril to:**
 - 32 **(A) wildlife; or**
 - 33 **(B) domestic animal;**
- 34 **health, safety, or welfare; or**
- 35 **(7) the spread of invasive species, pests, or diseases affecting**
 36 **plants.**

37 **To obtain a determination from the governor, an agency must**
 38 **submit to the governor the text of the proposed provisional rule, a**
 39 **statement justifying the need for provisional rulemaking**
 40 **procedures, and any additional information required by the**
 41 **governor in the form and in the manner required by the governor.**
 42 **The governor may not approve provisional rulemaking for any**

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1 part of a proposed provisional rule that adds or amends language
 2 to increase or expand application of a fee, fine, or civil penalty or
 3 a schedule of fees, fines, or civil penalties before submitting the
 4 proposal to the budget committee for review. A notice of
 5 determination by the governor shall include findings that explain
 6 the basis for the determination. The notice of determination shall
 7 be provided to the agency in an electronic format. Approval of a
 8 request shall be treated as a determination that the rule meets the
 9 criteria in this subsection.

10 (c) After an agency adopts a rule under this section, the governor
 11 approves provisional rulemaking procedures for a rule but before
 12 the agency adopts the provisional rule, the agency shall submit the
 13 rule to the publisher for the assignment of obtain a document control
 14 number. The agency shall submit the rule in the form required by
 15 section 20 of this chapter and with the documents required by section
 16 21 of this chapter. from the publisher. The publisher shall determine
 17 the documents and the format of the rule and other documents to that
 18 must be submitted under this subsection. to the publisher to obtain
 19 a document control number. The agency must submit at least the
 20 following:

- 21 (1) The full text of the proposed provisional rule in the form
 22 required by section 20 of this chapter.
- 23 (2) A statement justifying the need for provisional
 24 rulemaking.
- 25 (3) The approval of the governor to use provisional
 26 rulemaking procedures required by law.
- 27 (4) The documents required by section 21 of this chapter.

28 An agency may not adopt a proposed provisional rule until after
 29 the publisher notifies the agency that the publisher has complied
 30 with subsection (d). At least ten (10) regular business days must
 31 elapse after the publisher has complied with subsection (d) before
 32 the department of natural resources, the natural resources
 33 commission, the department of environmental management, or a
 34 board that has rulemaking authority under IC 13 adopts a
 35 provisional rule.

36 (d) Upon receipt of documents described in subsection (c), the
 37 publisher shall distribute the full text of the proposed provisional
 38 rule to legislators and legislative committees in the manner and the
 39 form specified by the legislative council or the personnel
 40 subcommittee of the legislative council acting for the legislative
 41 council. After distribution has occurred, the publisher shall notify
 42 the agency of the date that distribution under this subsection has

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1 **occurred.**

2 ~~(d)~~ **(e)** After the document control number has been assigned **and**
3 **the agency adopts the rule**, the agency shall submit the ~~rule~~ **following**
4 to the publisher for filing:

5 **(1) The text of the adopted provisional rule.** The agency shall
6 submit the **provisional** rule in the form required by section 20 of
7 this chapter. ~~and with~~

8 **(2) A signature page that indicates that the agency has**
9 **adopted the provisional rule in conformity with all**
10 **procedures required by law.**

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

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

17 The publisher shall determine the format of the **provisional** rule and
18 other documents to be submitted under this subsection. **The**
19 **substantive text of the adopted provisional rule must be**
20 **substantially similar to the text of the proposed provisional rule**
21 **submitted to the governor. A provisional rule may suspend but not**
22 **repeal a rule approved by the governor under section 34 of this**
23 **chapter.**

24 ~~(e)~~ **(f)** Subject to **subsections (c) and (e) and** section 39 of this
25 chapter, the publisher shall:

26 (1) accept the rule for filing; ~~and~~

27 (2) electronically record the date and time that the rule is
28 accepted; ~~and~~

29 **(3) publish the text of the adopted provisional rule and the**
30 **governor's approval in the Indiana Register.**

31 ~~(f)~~ **(g)** A **provisional** rule adopted by an agency under this section
32 takes effect on the latest of the following dates:

33 (1) The effective date of the statute delegating authority to the
34 agency to adopt the **provisional** rule.

35 (2) The date and time that the **provisional** rule is accepted for
36 filing under subsection ~~(e)~~: **(f)**.

37 (3) The effective date stated by the adopting agency in the
38 **provisional** rule.

39 (4) The date of compliance with every requirement established
40 by law as a prerequisite to the adoption or effectiveness of the
41 **provisional** rule.

42 (5) The statutory effective date for ~~an emergency~~ **a provisional**

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1 rule set forth in the statute authorizing the agency to adopt
2 emergency rules: law.

3 (g) Unless otherwise provided by the statute authorizing adoption
4 of the rule:

5 (1) a rule adopted under this section expires not later than ninety
6 (90) days after the rule is accepted for filing under subsection
7 (e);

8 (2) a rule adopted under this section may be extended by
9 adopting another rule under this section, but only for one (1)
10 extension period; and

11 (3) for a rule adopted under this section to be effective after one
12 (1) extension period, the rule must be adopted under:

13 (A) sections 24 through 36 of this chapter; or

14 (B) IC 13-14-9;

15 as applicable.

16 (h) An agency may amend a provisional rule with another
17 provisional rule by following the procedures in this section for the
18 amending provisional rule. However, unless otherwise provided by
19 IC 4-22-2.3, a provisional rule and all amendments of a provisional
20 rule by another provisional rule expire not later than one hundred
21 eighty (180) days after the initial provisional rule is accepted for
22 filing under subsection (f). The subject of the provisional rule,
23 including all amendments to the provisional rule, may not be
24 subsequently extended under this section or section 37.2 of this
25 chapter. If the governor determines that the circumstance that is
26 the basis for using the procedures under this section ceases to exist,
27 the governor may terminate the provisional rule before the lapse
28 of one hundred eighty (180) days. The termination is effective when
29 filed with the publisher. The publisher shall publish the
30 termination notice in the Indiana Register.

31 (h) This section may not be used to readopt a rule under
32 IC 4-22-2.5.

33 (i) The publisher of the Indiana administrative code shall annually
34 publish a list of agencies authorized to adopt rules under this section:

35 (i) Subject to subsection (j), the attorney general or the
36 governor may file an objection to a provisional rule that is adopted
37 under this section not later than forty-five (45) days after the date
38 that a provisional rule or amendment to a provisional rule is
39 accepted for filing under subsection (f). The objection must cite the
40 document control number for the affected provisional rule and
41 state the basis for the objection. When filed with the publisher, the
42 objection has the effect of invalidating the provisional rule or

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1 amendment to a provisional rule. The publisher shall publish the
2 objection in the Indiana Register.

3 (j) The attorney general may file a written objection to a
4 provisional rule under subsection (i) only if the attorney general
5 determines that the provisional rule has been adopted:

- 6 (1) without statutory authority; or
- 7 (2) without complying with this section.

8 A notice of objection to a provisional rule by the attorney general
9 must include findings that explain the basis for the determination.
10 The notice of objection shall be provided to the agency in an
11 electronic format.

12 SECTION 31. IC 4-22-2-37.2 IS ADDED TO THE INDIANA
13 CODE AS A NEW SECTION TO READ AS FOLLOWS
14 [EFFECTIVE JULY 1, 2023]: Sec. 37.2. (a) The following do not
15 apply to a rule adopted under this section:

- 16 (1) Sections 23 through 27 of this chapter or IC 13-14-9 (as
17 applicable).
- 18 (2) Sections 28 through 36 of this chapter.

19 The amendments to this section made in the 2023 regular session
20 of the general assembly apply to interim rules that are accepted for
21 filing by the publisher of the Indiana Register after June 30, 2023,
22 regardless of whether the adopting agency initiated official action
23 to adopt the interim rule before July 1, 2023. An action taken
24 before July 1, 2023, in conformity with this section (as effective
25 after June 30, 2023) is validated to the same extent as if the action
26 was taken after June 30, 2023.

27 (b) An agency may only adopt a rule on a subject for which the
28 agency has rulemaking authority using the procedures in this
29 section if the governor finds that the agency proposing to adopt the
30 rule has demonstrated to the satisfaction of the governor that use
31 of interim rulemaking procedures under this section is necessary
32 to implement:

- 33 (1) a new state or federal law or program, rule of another
34 state agency, federal regulation, or federal grant or loan
35 agreement, or (if used by the agency to carry out the
36 agency's responsibilities) a building, an equipment, a
37 firefighting, a safety, or a professional code adopted by a
38 nationally recognized organization;
- 39 (2) a change in a state or federal law or program, rule of
40 another state agency, federal regulation, federal grant or
41 loan agreement, or (if used by the agency to carry out the
42 agency's responsibilities) a building, an equipment, a

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1 firefighting, a safety, or a professional code adopted by a
2 nationally recognized organization; or

3 (3) a category of rule authorized under IC 4-22-2.3 to be
4 adopted as an interim rule;

5 before the time that a final rule approved by the governor under
6 section 34 of this chapter could reasonably take effect.

7 (c) To obtain a determination from the governor, an agency
8 must submit to the governor the text of the proposed interim rule,
9 a statement justifying the need for interim rulemaking procedures,
10 and any additional information required by the governor in the
11 form and in the manner required by the governor. The governor
12 may not approve interim rulemaking for any part of a proposed
13 interim rule that adds or amends language to increase or expand
14 application of a fee, fine, or civil penalty or a schedule of fees, fines,
15 or civil penalties before submitting the proposal to the budget
16 committee for review. A notice of determination by the governor
17 shall include findings that explain the basis for the determination.
18 The notice of determination shall be provided to the agency in an
19 electronic format. Approval of a request shall be treated as a
20 determination that the rule meets the criteria in this subsection.

21 (d) To publish a notice of interim rulemaking in the Indiana
22 Register, the agency must submit the following to the publisher:

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

25 (2) The approval of the governor to use interim rulemaking
26 procedures for the rule.

27 (3) If the interim rule adds or amends language to increase
28 or expand application of a fee, fine, or civil penalty or a
29 schedule of fees, fines, or civil penalties, the agenda of the
30 budget committee meeting at which the rule was scheduled
31 for review.

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

33 The publisher shall review materials submitted under this section
34 and determine the date that the publisher intends to include the
35 material in the Indiana Register. After establishing the intended
36 publication date, the publisher shall provide a written or an
37 electronic mail authorization to proceed to the agency.

38 (e) The agency shall include the following in the notice of the
39 public comment period:

40 (1) A general description of the subject matter of the
41 proposed interim rule, including the document control
42 number.

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- 1 **(2) The full text of the agency's proposed interim rule in the**
- 2 **form required by section 20 of this chapter (excluding the**
- 3 **text of a matter incorporated by reference under section 21**
- 4 **of this chapter).**
- 5 **(3) A statement justifying any requirement or cost that is:**
- 6 **(A) imposed on a regulated entity under the interim**
- 7 **rule; and**
- 8 **(B) not expressly required by the statute authorizing the**
- 9 **agency to adopt rules or any other state or federal law.**
- 10 **The statement required under this subdivision must include**
- 11 **a reference to any data, studies, or analyses relied upon by**
- 12 **the agency in determining that the imposition of the**
- 13 **requirement or cost is necessary.**
- 14 **(4) Information concerning where, when, and how a person**
- 15 **may inspect and copy any data, studies, or analyses**
- 16 **referenced under subdivision (3).**
- 17 **(5) Information concerning where, when, and how a person**
- 18 **may inspect any documents incorporated by reference into**
- 19 **the proposed interim rule under section 21 of this chapter.**
- 20 **(6) A date that is thirty (30) days after the notice is published**
- 21 **in the Indiana Register by which written comments are due**
- 22 **and a statement explaining that any person may submit**
- 23 **written comments concerning the proposed interim rule**
- 24 **during the public comment period and instructions on when,**
- 25 **where, and how the person may submit written comments.**
- 26 **However, inadequacy or insufficiency of the subject matter**
- 27 **description under subdivision (1) or a statement of justification**
- 28 **under subdivision (3) in a notice does not invalidate a rulemaking**
- 29 **action. An agency may continue the comment period by publishing**
- 30 **a subsequent notice in the Indiana Register extending the comment**
- 31 **period.**
- 32 **(f) Before adopting the interim rule, the agency shall prepare**
- 33 **a written response to comments received by the agency, including**
- 34 **the reasons for rejecting any recommendations made in the**
- 35 **comments.**
- 36 **(g) After an agency has completed the public comment period**
- 37 **and complied with subsection (f), the agency may:**
- 38 **(1) adopt a rule that is identical to a proposed interim rule**
- 39 **published in the Indiana Register under this section; or**
- 40 **(2) adopt a revised version of a proposed interim rule**
- 41 **published under this section and include provisions that did**
- 42 **not appear in the initially published proposed version.**

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

6 **(h) After the agency adopts the interim rule, the agency shall**
 7 **submit the following to the publisher for filing:**

8 **(1) The text of the adopted interim rule. The agency shall**
 9 **submit the full text of the interim rule in the form required**
 10 **by section 20 of this chapter.**

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

14 **(3) A signature page that indicates that the agency has**
 15 **adopted the interim rule in conformity with all procedures**
 16 **required by law.**

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

18 **The publisher shall determine the format of the interim rule and**
 19 **other documents to be submitted under this subsection. An interim**
 20 **rule may suspend but not repeal a rule approved by the governor**
 21 **under section 34 of this chapter.**

22 **(i) Subject to subsection (h) and section 39 of this chapter, the**
 23 **publisher shall:**

24 **(1) accept the rule for filing;**

25 **(2) electronically record the date and time that the rule is**
 26 **accepted; and**

27 **(3) publish the text of the adopted interim rule and the**
 28 **governor's approval in the Indiana Register.**

29 **(j) An interim rule adopted by an agency under this section**
 30 **takes effect on the latest of the following dates:**

31 **(1) The effective date of the statute delegating authority to**
 32 **the agency to adopt the interim rule.**

33 **(2) The date and time that the interim rule is accepted for**
 34 **filing under subsection (i).**

35 **(3) The effective date stated by the adopting agency in the**
 36 **interim rule.**

37 **(4) The date of compliance with every requirement**
 38 **established by law as a prerequisite to the adoption or**
 39 **effectiveness of the interim rule.**

40 **(5) The statutory effective date for an interim rule set forth**
 41 **in law.**

42 **(k) An agency may amend an interim rule with another**

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1 interim rule by following the procedures in this section for
 2 adoption of an interim rule. Except as provided in IC 4-22-2.3, an
 3 interim rule and all subsequent rules on the same subject adopted
 4 under section 37.1 of this chapter or this section expire not later
 5 than four hundred twenty-five (425) days after the initial interim
 6 rule is accepted for filing under subsection (i).

7 (l) Subject to subsection (m), the attorney general or the
 8 governor may file an objection to an interim rule that is adopted
 9 under this section not later than forty-five (45) days after the date
 10 that an interim rule or amendment to an interim rule is accepted
 11 for filing under subsection (i). The objection must cite the
 12 document control number for the affected interim rule and state
 13 the basis for the objection. When filed with the publisher, the
 14 objection has the effect of invalidating the interim rule or
 15 amendment to an interim rule. The publisher shall publish the
 16 objection in the Indiana Register.

17 (m) The attorney general may file a written objection to an
 18 interim rule under subsection (l) only if the attorney general
 19 determines that the interim rule has been adopted:

- 20 (1) without statutory authority; or
 21 (2) without complying with this section.

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

26 SECTION 32. IC 4-22-2-38, AS AMENDED BY P.L.123-2006,
 27 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2023]: Sec. 38. (a) This section applies to a rulemaking action
 29 resulting in any of the following rules:

- 30 (1) A rule that brings another rule into conformity with section
 31 20 of this chapter.
 32 (2) A rule that amends another rule to replace an inaccurate
 33 reference to a statute, rule, regulation, other text, governmental
 34 entity, or location with an accurate reference, when the
 35 inaccuracy is the result of the rearrangement of a federal or state
 36 statute, rule, or regulation under a different citation number, a
 37 federal or state transfer of functions from one (1) governmental
 38 entity to another, a change in the name of a federal or state
 39 governmental entity, or a change in the address of an entity.
 40 (3) A rule correcting any other typographical, clerical, or
 41 spelling error in another rule.

42 (b) Sections 24 through ~~37.1~~ 37.2 of this chapter do not apply to

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1 rules described in subsection (a).

2 (c) Notwithstanding any other statute, an agency may adopt a rule
3 described by subsection (a) without complying with any statutory
4 notice, hearing, adoption, or approval requirement. In addition, the
5 governor may adopt a rule described in subsection (a) for an agency
6 without the agency's consent or action.

7 (d) A rule described in subsection (a) shall be submitted to the
8 publisher for the assignment of a document control number. The
9 agency (or the governor, for the agency) shall submit the rule in the
10 form required by section 20 of this chapter and with the documents
11 required by section 21 of this chapter. The publisher shall determine
12 the number of copies of the rule and other documents to be submitted
13 under this subsection.

14 (e) After a document control number is assigned, the agency (or
15 the governor, for the agency) shall submit the rule to the publisher for
16 filing. The agency (or the governor, for the agency) shall submit the
17 rule in the form required by section 20 of this chapter and with the
18 documents required by section 21 of this chapter. The publisher shall
19 determine the format of the rule and other documents to be submitted
20 under this subsection.

21 (f) Subject to section 39 of this chapter, the publisher shall:

- 22 (1) accept the rule for filing; and
23 (2) electronically record the date and time that it is accepted.

24 (g) Subject to subsection (h), a rule described in subsection (a)
25 takes effect on the latest of the following dates:

- 26 (1) The date that the rule being corrected by a rule adopted under
27 this section becomes effective.
28 (2) The date that is forty-five (45) days from the date and time
29 that the rule adopted under this section is accepted for filing
30 under subsection (f).

31 (h) The governor or the attorney general may file an objection to
32 a rule that is adopted under this section before the date that is forty-five
33 (45) days from the date and time that the rule is accepted for filing
34 under subsection (f). When filed with the publisher, the objection has
35 the effect of invalidating the rule.

36 SECTION 33. IC 4-22-2-39, AS AMENDED BY P.L.123-2006,
37 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
38 JULY 1, 2023]: Sec. 39. (a) When an agency submits a rule for filing
39 under section 35, 37.1, **37.2**, or 38 of this chapter, the publisher may
40 accept the rule for filing only if the following conditions are met:

- 41 (1) The following documents are submitted to allow the
42 publisher to comply with IC 4-22-7-5:

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- 1 (A) One (1) electronic copy of the rule.
- 2 (B) One (1) copy of any matters incorporated by reference
- 3 under section 21 of this chapter in the format specified by
- 4 the publisher.
- 5 (C) One (1) copy of any supporting documentation
- 6 submitted under section 31 of this chapter in the format
- 7 specified by the publisher.
- 8 (2) Each submitted copy includes a reference to the document
- 9 control number assigned to the rule by the publisher.
- 10 (3) Each submitted copy indicates that the agency has conducted
- 11 its rulemaking action in conformity with all procedures required
- 12 by law. However, if section 31 of this chapter applies to the rule,
- 13 the publisher shall rely on the approval of the attorney general as
- 14 the basis for determining that the agency has complied with all
- 15 procedures required before the date of the approval.
- 16 (b) If a rule includes a statement that the rule is not effective until:
- 17 (1) an agency has complied with requirements established by the
- 18 federal or state government;
- 19 (2) a specific period of time has elapsed; or
- 20 (3) a date has occurred;
- 21 the agency has complied with subsection (a)(3) even if the described
- 22 event or time has not occurred before the publisher reviews the rule
- 23 under this section.
- 24 (c) The publisher shall take no more than three (3) business days
- 25 to complete the review of a rule under this section.
- 26 SECTION 34. IC 4-22-2-40, AS AMENDED BY P.L.53-2014,
- 27 SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 28 JULY 1, 2023]: Sec. 40. (a) At any time before a rule is accepted for
- 29 filing by the publisher under section 35, 37.1, **37.2**, or 38 of this
- 30 chapter, the agency that adopted the rule may recall it. A rule may be
- 31 recalled regardless of whether:
- 32 (1) the rule has been disapproved by the attorney general under
- 33 section 32 of this chapter; or
- 34 (2) the rule has been disapproved by the governor under section
- 35 34 of this chapter.
- 36 (b) **IC 13-14-9 and** sections ~~24~~ **23** through 38 of this chapter do
- 37 not apply to a recall action under this section. However, the agency
- 38 shall distribute a notice of its recall action to the publisher for
- 39 publication in the Indiana Register. **IC 13-14-9 and** sections ~~24~~ **23** and
- 40 26 of this chapter do not apply to a readoption action under subsection
- 41 (c).
- 42 (c) After an agency recalls a rule, the agency may reconsider its

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1 adoption action and adopt an identical rule or a revised rule. However,
 2 if **IC 13-14-9** or sections ~~24~~ **23** through 36 of this chapter apply to the
 3 recalled rule, the readopted rule must comply with the requirements
 4 under section 29 of this chapter or **IC 13-14-9-9 (as applicable)**.

5 (d) The recall of a rule under this section voids any approval given
 6 after the rule was adopted and before the rule was recalled.

7 (e) If a rule is:

8 (1) subject to sections 31 and 33 of this chapter;

9 (2) recalled under subsection (a); and

10 (3) readopted under subsection (c);

11 the agency shall resubmit the readopted version of the recalled rule to
 12 the attorney general and the governor for approval. The attorney
 13 general and the governor have the full statutory period to approve or
 14 disapprove the readopted rule. ~~If the recalled rule was submitted to the~~
 15 ~~office of management and budget under section 28 of this chapter,~~ The
 16 agency shall resubmit the readopted version of a recalled rule to the
 17 office of management and budget with sufficient information for the
 18 office of management and budget to evaluate whether ~~its~~ **the** initial
 19 ~~fiscal impact statement regulatory analysis submitted to the office~~
 20 ~~of management and budget~~ under section ~~28~~ **22.8** of this chapter
 21 needs to be revised. ~~The office of management and budget shall revise~~
 22 ~~a fiscal impact statement under section 28 of this chapter~~ If the fiscal
 23 impact of the readopted rule is substantially different from the recalled
 24 rule, **the agency shall submit the revised regulatory analysis to the**
 25 **publisher for publication in the Indiana Register with the**
 26 **document control number assigned by the publisher to the rule.**
 27 The agency also shall comply with any other applicable approval
 28 requirement provided by statute.

29 (f) The readopted version of a recalled rule is effective only after
 30 the agency has complied with section 35, 37.1, **37.2**, or 38 of this
 31 chapter.

32 SECTION 35. IC 4-22-2-41, AS AMENDED BY P.L.123-2006,
 33 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 34 JULY 1, 2023]: Sec. 41. (a) At any time before a rule is accepted by the
 35 publisher for filing under section 35, 37.1, **37.2**, or 38 of this chapter,
 36 the agency that adopted the rule may withdraw it.

37 (b) **IC 13-14-9** and sections ~~24~~ **23** through 40 of this chapter do
 38 not apply to a withdrawal action. However, the withdrawing agency
 39 shall distribute a notice of the withdrawal to the publisher for
 40 publication in the Indiana Register.

41 (c) The withdrawal of a rule under this section terminates the
 42 rulemaking action, and the withdrawn rule may become effective only

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1 through another rulemaking action initiated under this chapter.

2 SECTION 36. IC 4-22-2.1-1, AS AMENDED BY P.L.139-2007,
3 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2023]: Sec. 1. Except for a rule that is the subject of a
5 rulemaking action under IC 13-14-9, IC 22-12, IC 22-13, IC 22-14, or
6 IC 22-15, this chapter applies to a rule for which the notice **of the first**
7 **public comment period** required by IC 4-22-2-23 is published by an
8 agency after June 30, 2005.

9 SECTION 37. IC 4-22-2.1-5, AS AMENDED BY P.L.109-2015,
10 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2023]: Sec. 5. ~~(a)~~ If an agency intends to adopt a rule under
12 IC 4-22-2 that will impose requirements or costs on small businesses,
13 the agency shall prepare a statement that describes the annual
14 economic impact of a rule on all small businesses after the rule is fully
15 implemented. ~~as described in subsection (b).~~ The statement required by
16 this section must include the following:

17 (1) An estimate of the number of small businesses, classified by
18 industry sector, that will be subject to the proposed rule.

19 (2) An estimate of the average annual reporting, record keeping,
20 and other administrative costs that small businesses will incur to
21 comply with the proposed rule.

22 (3) An estimate of the total annual economic impact that
23 compliance with the proposed rule will have on all small
24 businesses subject to the rule. ~~The agency is not required to~~
25 ~~submit the proposed rule to the office of management and budget~~
26 ~~for a fiscal analysis under IC 4-22-2-28 unless the estimated~~
27 ~~economic impact of the rule is greater than five hundred~~
28 ~~thousand dollars (\$500,000) on all regulated entities; as set forth~~
29 ~~in IC 4-22-2-28.~~

30 (4) A statement justifying any requirement or cost that is:

31 (A) imposed on small businesses by the rule; and

32 (B) not expressly required by:

33 (i) the statute authorizing the agency to adopt the rule;
34 or

35 (ii) any other state or federal law.

36 The statement required by this subdivision must include a
37 reference to any data, studies, or analyses relied upon by the
38 agency in determining that the imposition of the requirement or
39 cost is necessary.

40 (5) A regulatory flexibility analysis that considers any less
41 intrusive or less costly alternative methods of achieving the
42 purpose of the proposed rule. The analysis under this subdivision

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1 must consider the following methods of minimizing the
2 economic impact of the proposed rule on small businesses:

3 (A) The establishment of less stringent compliance or
4 reporting requirements for small businesses.

5 (B) The establishment of less stringent schedules or
6 deadlines for compliance or reporting requirements for
7 small businesses.

8 (C) The consolidation or simplification of compliance or
9 reporting requirements for small businesses.

10 (D) The establishment of performance standards for small
11 businesses instead of design or operational standards
12 imposed on other regulated entities by the rule.

13 (E) The exemption of small businesses from part or all of
14 the requirements or costs imposed by the rule.

15 If the agency has made a preliminary determination not to
16 implement one (1) or more of the alternative methods
17 considered, the agency shall include a statement explaining the
18 agency's reasons for the determination, including a reference to
19 any data, studies, or analyses relied upon by the agency in
20 making the determination.

21 (b) For purposes of subsection (a), a proposed rule will be fully
22 implemented with respect to small businesses after:

23 (1) the conclusion of any phase-in period during which:

24 (A) the rule is gradually made to apply to small businesses
25 or certain types of small businesses; or

26 (B) the costs of the rule are gradually implemented; and

27 (2) the rule applies to all small businesses that will be affected
28 by the rule.

29 In determining the total annual economic impact of the rule under
30 subsection (a)(3), the agency shall consider the annual economic
31 impact on all small businesses beginning with the first twelve (12)
32 month period after the rule is fully implemented. The agency may use
33 actual or forecasted data and may consider the actual and anticipated
34 effects of inflation and deflation. The agency shall describe any
35 assumptions made and any data used in determining the total annual
36 economic impact of a rule under subsection (a)(3).

37 (c) The agency shall:

38 (1) publish the statement required under subsection (a) in the
39 Indiana Register as required by IC 4-22-2-24; and

40 (2) deliver a copy of the statement, along with the proposed rule,
41 to the small business ombudsman not later than the date of
42 publication under subdivision (1).

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1 SECTION 38. IC 4-22-2.1-7, AS ADDED BY P.L.188-2005,
 2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2023]: Sec. 7. Before an agency may act under ~~IC 4-22-2.5~~
 4 **IC 4-22-2.6** to readopt a rule to which the chapter applies, the agency
 5 must conduct the review required under ~~IC 4-22-2.5-3.1.~~
 6 **IC 4-22-2.6-4.**

7 SECTION 39. IC 4-22-2.3 IS ADDED TO THE INDIANA CODE
 8 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2023]:

10 **Chapter 2.3. Transitional Provisions; Exceptions to**
 11 **Rulemaking Procedures**

12 **Sec. 1. (a) This subsection and subsection (b) set an expiration**
 13 **date for rules adopted under IC 4-22-2-37.1 (as effective before**
 14 **July 1, 2023) or IC 4-22-2-37 (before its repeal) that at the time of**
 15 **adoption were permitted by law to continue in effect for an**
 16 **indefinite period of time. The rules to which this subsection applies**
 17 **include rules that were permitted to continue until another**
 18 **emergency rule or a final rule was adopted to replace the**
 19 **emergency rule or the agency repealed the emergency rule. Subject**
 20 **to subsections (b) and (c), the rule expires not later than:**

21 **(1) October 1, 2023; or**

22 **(2) if the rule is included on a list described in subsection (d),**
 23 **October 1, 2024;**

24 **as applicable. An emergency rule that expires under this subsection**
 25 **may not be renewed under IC 4-22-2-37.1 (as effective after June**
 26 **30, 2023). If the rule meets the criteria in IC 4-22-2-37.2 for**
 27 **adoption as an interim rule, the rule may be adopted under**
 28 **IC 4-22-2-37.2.**

29 **(b) The text of an emergency rule adopted under**
 30 **IC 4-22-2-37.1 (as effective before July 1, 2023) or IC 4-22-2-37**
 31 **(before its repeal) that is:**

32 **(1) incorporated into a provision of the Indiana**
 33 **Administrative Code that before July 1, 2023, was amended**
 34 **under the procedures in IC 4-22-2-23 through IC 4-22-2-36**
 35 **or IC 13-14-9 (as applicable); or**

36 **(2) readopted as part of a provision of the Indiana**
 37 **Administrative Code that was readopted under IC 4-22-2.5**
 38 **(before its repeal) or IC 13-14-9.5 (before its repeal);**

39 **continues in effect to the extent that the text remains part of the**
 40 **provision of the Indiana Administrative Code into which the**
 41 **emergency rule text was incorporated.**

42 **(c) An emergency rule adopted under IC 4-22-2-37.1 (as**

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1 effective before July 1, 2023) of the type described in sections 3
 2 through 9 of this chapter, expires as provided in the applicable
 3 provisions of sections 3 through 9 of this chapter.

4 (d) Not later than September 1, 2023, the governor may submit
 5 to the publisher a list of rules described in subsection (a) for which
 6 the expiration under this section is October 1, 2024, instead of
 7 October 1, 2023. The publisher shall publish a list submitted under
 8 this subsection in the Indiana Register.

9 Sec. 2. Before a provisional rule adopted under IC 4-22-2-37.1
 10 (as effective after June 30, 2023) expires, the governor by executive
 11 order may authorize the extension of the provisional rule under the
 12 interim procedures in IC 4-22-2-37.2 if the governor determines
 13 and finds in the executive order that the provisional circumstances
 14 justifying the provisional rule continue to exist. A rule adopted
 15 under the authority of an extension under this section, expires not
 16 later than one (1) year after the date on which the rules are
 17 published in the Indiana Register.

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

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

33 Sec. 5. The department of natural resources (or to the extent
 34 permitted by IC 14-10-2, the natural resources commission) may
 35 adopt interim rules under the interim rule procedures in
 36 IC 4-22-2-37.2 to carry out the duties of the department of natural
 37 resources under a law listed in IC 14-10-2-5. A rule described in
 38 this section may be continued in another interim rule only if the
 39 governor determines under section IC 4-22-2-37.2(c) that the policy
 40 options available to the agency are so limited that use of the
 41 additional notice, comment, and review procedures in IC 4-22-2-23
 42 through IC 4-22-2-36 would provide no benefit to persons

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1 regulated or otherwise affected by the rule.

2 **Sec. 6. The following apply to the department of financial**
 3 **institutions:**

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

7 **(A) sixty (60) days before January 1 of each**
 8 **odd-numbered year in which dollar amounts under**
 9 **IC 24-4.5 (Uniform Consumer Credit Code) are to**
 10 **change, the changes in dollar amounts required by**
 11 **IC 24-4.5-1-106(2);**

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

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

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

22 **A rule described in this subdivision expires not later than**
 23 **January of the next odd-numbered year after the department**
 24 **of financial institutions is required to issue the rule.**

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

33 **(3) The department of financial institutions may adopt a rule**
 34 **described in IC 34-55-10-2 (bankruptcy exemptions;**
 35 **limitations) or IC 34-55-10-2.5 in conformity with the**
 36 **procedures in IC 4-22-2-23 through IC 4-22-2-36 or the**
 37 **interim rule procedures in IC 4-22-2-37.2. A rule described**
 38 **in this subdivision adopted under IC 4-22-2-37.2 expires not**
 39 **later than two (2) years after the rule is accepted for filing by**
 40 **the publisher of the Indiana Register.**

41 **A rule described in this section may be continued in another**
 42 **interim rule only if the governor determines under section**

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1 IC 4-22-2-37.2(c) that the policy options available to the agency are
2 so limited that use of the additional notice, comment, and review
3 procedures in IC 4-22-2-23 through IC 4-22-2-36 would provide no
4 benefit to persons regulated or otherwise affected by the rule.

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

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

14 (1) has been scheduled or emergency scheduled by the United
15 States Drug Enforcement Administration;

16 (2) has been scheduled, emergency scheduled, or
17 criminalized by another state; or

18 (3) has:

19 (A) a high potential for abuse; and

20 (B) no accepted medical use in treatment in the United
21 States or lacks accepted safety for use in treatment
22 under medical supervision.

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

30 Sec. 9. The Indiana pesticide review board may adopt interim
31 rules under IC 4-22-2-37.2 to classify a pesticide as a restricted use
32 pesticide or a pesticide for use by prescription only pending review
33 by the general assembly, if the Indiana pesticide review board finds
34 that:

35 (1) the pesticide has been classified as a restricted use
36 pesticide or a pesticide for use by prescription only by the
37 United States Environmental Protection Agency; and

38 (2) adoption of the interim rule is necessary to prevent an
39 undue and immediate hazard to persons, animals, wildlife,
40 lands, or water, other than the pests that the pesticide is
41 intended to prevent, destroy, control, or mitigate.

42 A rule described in this section expires not later than sixty (60)

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1 days after adjournment sine die of the regular session of the
 2 general assembly that occurs after the interim rule proceeding is
 3 commenced.

4 SECTION 40. IC 4-22-2.5 IS REPEALED [EFFECTIVE JULY 1,
 5 2023]. (Expiration and Readoption of Administrative Rules).

6 SECTION 41. IC 4-22-2.6 IS ADDED TO THE INDIANA CODE
 7 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2023]:

9 **Chapter 2.6. Expiration and Readoption of Administrative**
 10 **Rules**

11 **Sec. 1. (a) Except as provided in this section and section 10 of**
 12 **this chapter, a rule expires January 1 of the fifth year after the**
 13 **year in which the rule takes effect, unless the rule expires or is**
 14 **repealed on an earlier date. Except for an amendment made under**
 15 **IC 4-22-2-38, the expiration date of a rule under this section is**
 16 **extended each time that a rule amending or readopting an**
 17 **unexpired rule takes effect. The rule, as amended or readopted,**
 18 **expires on January 1 of the fifth year after the year in which the**
 19 **amendment or readoption takes effect.**

20 **(b) If the latest version of a rule became effective:**

21 **(1) in calendar year 2017, the rule expires not later than**
 22 **January 1, 2024;**

23 **(2) in calendar year 2018, the rule expires not later than**
 24 **January 1, 2025;**

25 **(3) in calendar year 2019, the rule expires not later than**
 26 **January 1, 2026; or**

27 **(4) in calendar year 2020, the rule expires not later than**
 28 **January 1, 2027.**

29 **(c) If the latest version of a rule became effective before**
 30 **January 1, 2017, and:**

31 **(1) the rule was adopted by an agency established under**
 32 **IC 13, the rule expires not later than January 1, 2025;**

33 **(2) the rule was adopted by an agency established under**
 34 **IC 16, the rule expires not later than January 1, 2026; or**

35 **(3) the rule was adopted by an agency not described in**
 36 **subdivision (1) or (2), the rule expires not later than January**
 37 **1, 2027.**

38 **(d) A readoption rulemaking action under IC 4-22-2.5 (before**
 39 **its repeal) or IC 13-14-9.5 (before its repeal) that became effective**
 40 **before July 1, 2023, is validated to the same extent as if the**
 41 **rulemaking action had been conducted under the procedures in**
 42 **this chapter.**

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1 (e) The determination of whether an administrative rule
 2 expires under this chapter shall be applied at the level of an
 3 Indiana Administrative Code section.

4 Sec. 2. An agency that has rulemaking authority may readopt
 5 a rule in anticipation of a rule's expiration under section 1 of this
 6 chapter. To readopt a rule, an agency may readopt the rule either:

7 (1) without changes in conformity with the procedures in
 8 sections 3 through 9 of this chapter; or

9 (2) with or without changes in conformity with the
 10 procedures in IC 4-22-2-23 through IC 4-22-2-36 (as
 11 modified by IC 13-14-9, when applicable).

12 Sec. 3. (a) Except as provided in subsection (b), if an agency
 13 intends to readopt a rule, the agency shall, not later than January
 14 1 of the fourth year after the year in which the rule takes effect,
 15 provide an initial notice of the intended readoption in an electronic
 16 format designated by the publisher to legislators and legislative
 17 committees in the manner and on the schedule specified by the
 18 legislative council or the personnel subcommittee of the legislative
 19 council acting for the legislative council.

20 (b) An agency is not required to provide the initial notice
 21 under subsection (a) for a rule described in section 1(b)(1) of this
 22 chapter.

23 Sec. 4. (a) To readopt a rule, an agency must conduct a review
 24 of the rule to consider the continued need for the rule and whether
 25 the rule, if readopted, will meet each of the standards in
 26 IC 4-22-2-19.5 and (if applicable) the requirements for fees, fines,
 27 and civil penalties in IC 4-22-2-19.6.

28 (b) In the review, the agency shall reexamine previous cost
 29 benefit, economic impact, fiscal impact, and regulatory burden
 30 statements prepared by the agency for the rule under IC 4-3-22-13,
 31 IC 4-3-27-12, IC 4-22-2-22.7, IC 4-22-2-22.8, IC 4-22-2-28,
 32 IC 4-22-2.1-5, or an executive order and revise the statements to
 33 reflect any change in circumstances that affect the analysis. The
 34 agency shall identify any alternative methods of achieving the
 35 purpose of the rule that are less costly or less intrusive, or that
 36 would otherwise minimize the economic impact of the proposed
 37 rule on small businesses (as defined in IC 4-22-2.1-4) and other
 38 regulated entities. The agency also shall consider the following:

39 (1) The nature of any complaints or comments received from
 40 the public, including small businesses (as defined in
 41 IC 4-22-2.1-4), concerning the rule or the rule's
 42 implementation by the agency.

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- 1 (2) The complexity of the rule, including any difficulties
2 encountered by:
- 3 (A) the agency in administering the rule; or
4 (B) small businesses (as defined in IC 4-22-2.1-4) or
5 other regulated persons in complying with the rule.
- 6 (3) The degree to which technology, economic conditions, or
7 other factors have changed in the area affected by the rule
8 since the last time the rule was reviewed.
- 9 (c) The agency shall prepare written findings concerning the
10 agency's determinations under this section.
- 11 Sec. 5. (a) If an agency elects to readopt a rule under this
12 chapter, the agency shall submit a notice of proposed readoption
13 to the publisher not later than the first regular business day in
14 September of the year preceding the year in which the rule expires
15 under this chapter for publication in the Indiana Register. A
16 separate notice must be published for each board or other person
17 or entity with rulemaking authority.
- 18 (b) The notice must include the following:
- 19 (1) A general description of the subject matter of all rules
20 proposed to be readopted.
- 21 (2) A listing of rules that are proposed to be readopted, listed
22 by their titles and subtitles only.
- 23 (3) A written comment period of thirty (30) days and
24 instructions on how to submit written comments to the
25 agency.
- 26 (4) A request for comments on whether specific rules should
27 be reviewed through the regular rulemaking process under
28 IC 4-22-2-23 through IC 4-22-2-36 (as modified by
29 IC 13-14-9, when applicable).
- 30 (5) A summary of the agency's findings under section 4 of
31 this chapter.
- 32 (6) Any other information required by the publisher.
- 33 (c) The agency shall submit the material in the form required
34 by IC 4-22-2-20. The agency need not resubmit the documents
35 required by IC 4-22-2-21 if the publisher received a copy of the
36 documents when the rule was previously adopted or amended. The
37 publisher shall review the material submitted under this section
38 and determine the date that the publisher intends to include the
39 material in the Indiana Register. After:
- 40 (1) establishing the intended publication date; and
41 (2) receiving the material as required by this section;
42 the publisher shall assign a document control number, provide an

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1 electronic mail authorization to proceed to the agency, and publish
2 the material on the intended publication date.

3 **Sec. 6. (a) The agency shall prepare responses to all comments**
4 **received during the comment period.**

5 **(b) The agency, after considering the written comments and**
6 **responses, may do the following:**

7 **(1) Conduct one (1) or more additional comment periods in**
8 **the manner provided in section 5 of this chapter on one (1) or**
9 **more rules within the scope of the notice of proposed**
10 **readoption. If a person submits to the agency during the**
11 **initial comment period under section 5 of this chapter a**
12 **written request stating a basis for considering a particular**
13 **rule separately from other rules in the notice of proposed**
14 **readoption, the agency may not readopt that rule under this**
15 **chapter. The agency may readopt that rule with or without**
16 **changes only through a rulemaking action initiated under**
17 **IC 4-22-2-23 through IC 4-22-2-36 (as modified by**
18 **IC 13-14-9, when applicable).**

19 **(2) Readopt one (1) or more rules within the scope of the**
20 **notice of proposed readoption without change.**

21 **(3) Repeal one (1) or more rules within the scope of the**
22 **notice of proposed readoption, if the need for the rule no**
23 **longer exists. The adopting authority may repeal a rule**
24 **without additional comment periods under section 5 of this**
25 **chapter.**

26 **Sec. 7. (a) The agency shall immediately submit the**
27 **rulemaking document containing the readopted rules to the**
28 **publisher for filing along with documentation demonstrating that**
29 **the agency has readopted the rules. The agency shall submit**
30 **material in the form required by IC 4-22-2-20. The rulemaking**
31 **document must make reference to the document control number**
32 **assigned by the publisher.**

33 **(b) If the rulemaking document complies with this section, the**
34 **publisher shall:**

35 **(1) accept the rule for filing; and**

36 **(2) electronically record the date and time the rule is**
37 **accepted.**

38 **Sec. 8. A readopted rule that has been accepted for filing under**
39 **section 7 of this chapter takes effect on the latest of the following**
40 **dates:**

41 **(1) The date that is thirty (30) days from the date and time**
42 **that the rule was accepted for filing under section 7 of this**

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- 1 chapter.
- 2 (2) The effective date stated by the agency in the rule.
- 3 (3) The date of compliance with every requirement
- 4 established by law as a prerequisite to the readoption or
- 5 effectiveness of the rule.
- 6 Sec. 9. An agency that terminates a rulemaking action to
- 7 readopt a rule with or without amendments shall submit a notice
- 8 of withdrawal of the readoption rulemaking action in the manner
- 9 provided in IC 4-22-2-41.
- 10 Sec. 10. If a rule is not readopted and the governor finds that
- 11 the failure to readopt the rule causes an emergency to exist, the
- 12 governor may, by executive order issued before the rule's
- 13 expiration date, postpone the expiration date of the rule until a
- 14 date that is not later than one (1) year after the date specified in
- 15 section 1 of this chapter.
- 16 Sec. 11. The publisher shall remove all rules that have expired
- 17 under this chapter from the Indiana Administrative Code.
- 18 However, a rule that has expired but is readopted under this
- 19 chapter (or IC 4-22-2.5 (before its repeal) or IC 13-14-9.5 (before
- 20 its repeal)) may not be removed from the Indiana Administrative
- 21 Code.
- 22 SECTION 42. IC 5-14-3.5-2, AS AMENDED BY P.L.87-2022,
- 23 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 24 JULY 1, 2023]: Sec. 2. (a) The auditor of state, working with the office
- 25 of technology established by IC 4-13.1-2-1, or another organization that
- 26 is part of a state educational institution, and the office of management
- 27 and budget established by IC 4-3-22-3, shall post on the Indiana
- 28 transparency ~~Internet web site~~ **website** the following data:
- 29 (1) A listing of state expenditures and fund balances, including
- 30 expenditures for contracts, grants, and leases.
- 31 (2) A listing of state owned real and personal property that has
- 32 a value of more than twenty thousand dollars (\$20,000).
- 33 The ~~web site~~ **website** must be electronically searchable by the public
- 34 and must be intuitive to users of the ~~web site:~~ **website**.
- 35 (b) The data base must include **the following** for each state
- 36 agency:
- 37 (1) The amount, date, payer, and payee of expenditures.
- 38 (2) A listing of state expenditures by:
- 39 (A) personal services;
- 40 (B) other operating expenses; or
- 41 (C) total operating expenses;
- 42 to reflect how the funds were appropriated in the state budget

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

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

19 SECTION 43. IC 5-22-10-3, AS AMENDED BY P.L.181-2015,
 20 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2023]: Sec. 3. (a) A purchasing agent shall maintain the
 22 contract records for a special purchase in a separate file.

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

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

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

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

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

37 SECTION 44. IC 5-22-18-4 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4. (a) Except as
 39 provided in this section or by another law, contract and purchasing
 40 records are public records subject to public inspection under IC 5-14-3.

41 **The information described in IC 5-22-10-3(c) are public records**
 42 **subject to public inspection under IC 5-14-3.**

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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 45. 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,
28 ineffective, or overly burdensome information requests from
29 state agencies to 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
41 of technology established by IC 4-13.1-2-1 to place information
42 concerning the availability of these services on state Internet web

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1 sites that the small business ombudsman or a state agency
 2 determines are most likely to be visited by small business owners
 3 and managers.
 4 (8) Assist in training agency coordinators who will be assigned
 5 to rules under IC ~~4-22-2-28.1(e)~~; **IC 4-22-28.1(b)**.
 6 (9) Investigate and attempt to resolve any matter regarding
 7 compliance by a small business with a law, rule, or policy
 8 administered by a state agency, either as a party to a proceeding
 9 or as a mediator.
 10 State agencies shall cooperate with the small business ombudsman to
 11 carry out the purpose of this section. The department of state revenue
 12 and the department of workforce development shall establish a program
 13 to distribute the information described in subdivision (7) to small
 14 businesses that are required to file returns or information with these
 15 state agencies.
 16 SECTION 46. IC 12-10.5-1-9, AS AMENDED BY P.L.123-2006,
 17 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2023]: Sec. 9. (a) Before finally adopting a rule under
 19 IC 4-22-2 to implement this chapter, the division shall consult with and
 20 fully consider any comments submitted by:
 21 (1) caretakers providing care for a special needs individual under
 22 this chapter;
 23 (2) individuals with special needs receiving care from a
 24 caretaker under this chapter;
 25 (3) area agencies on aging;
 26 (4) consumers and providers of home and community based
 27 services under IC 12-10-10 and IC 12-10-11.5; and
 28 (5) any other agency, volunteer group, faith based group, or
 29 individual that the division considers appropriate;
 30 to ensure that the rule complies with the requirements set forth in
 31 subsection (b).
 32 (b) Rules adopted under this chapter must:
 33 (1) include protections for the rights, safety, and welfare of
 34 individuals with special needs receiving care from a caretaker
 35 under this chapter, including reasonable monitoring and
 36 reporting requirements;
 37 (2) serve distinct populations, including:
 38 (A) the aged;
 39 (B) persons with developmental disabilities; and
 40 (C) persons with physical disabilities;
 41 in a manner that recognizes, and appropriately responds to, the
 42 particular needs of the population;

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1 (3) not create barriers to the availability of home and community
2 based services under IC 12-10-10 and IC 12-10-11.5 by
3 imposing costly or unduly burdensome requirements on
4 caretakers or other service providers, including:
5 (A) requirements for proof of financial responsibility; and
6 (B) monitoring, enforcement, reporting, or other
7 administrative requirements; and
8 (4) otherwise comply with IC 12-10-10, IC 12-10-11.5, and this
9 chapter.
10 (c) Before submitting a rule adopted under this chapter to the
11 attorney general for final approval under IC 4-22-2-31, the division
12 shall submit to the publisher (as defined in IC 4-22-2-3(f)) for
13 publication in the Indiana Register the division's written response ~~under~~
14 ~~IC 4-22-2-23~~ to any comments received from the parties described in
15 subsection (a). Submissions to the publisher shall be made in the
16 electronic format specified by the publisher.
17 SECTION 47. IC 12-10.5-2-3, AS AMENDED BY P.L.123-2006,
18 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2023]: Sec. 3. (a) Before finally adopting a rule under
20 IC 4-22-2 to implement this chapter, the division shall consult with and
21 fully consider any comments submitted by:
22 (1) continuum of care providers providing care under this
23 chapter;
24 (2) individuals receiving care under this chapter;
25 (3) area agencies on aging;
26 (4) consumers and providers of home and community based
27 services under IC 12-10-10 and IC 12-10-11.5; and
28 (5) any other agency, volunteer group, faith based group, or
29 individual that the division considers appropriate;
30 to ensure that the rule complies with the requirements set forth in
31 subsection (b).
32 (b) Rules adopted under this chapter must:
33 (1) include protections for the rights, safety, and welfare of
34 individuals receiving care under this chapter;
35 (2) serve distinct populations, including:
36 (A) the aged;
37 (B) persons with developmental disabilities; and
38 (C) persons with physical disabilities;
39 in a manner that recognizes, and appropriately responds to, the
40 particular needs of the population;
41 (3) not create barriers to the availability of home and community
42 based services under IC 12-10-10 and IC 12-10-11.5 by

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1 imposing costly or unduly burdensome requirements on
 2 continuum of care providers or other service providers,
 3 including:

4 (A) requirements for proof of financial responsibility; and
 5 (B) monitoring, enforcement, reporting, or other
 6 administrative requirements; and

7 (4) otherwise comply with IC 12-10-10, IC 12-10-11.5, and this
 8 chapter.

9 (c) Before submitting a rule adopted under this chapter to the
 10 attorney general for final approval under IC 4-22-2-31, the division
 11 shall submit to the publisher (as defined in IC 4-22-2-3(f)) for
 12 publication in the Indiana Register the division's written response ~~under~~
 13 ~~IC 4-22-2-23~~ to any comments received from the parties described in
 14 subsection (a). Submissions to the publisher shall be made in the
 15 electronic format specified by the publisher.

16 SECTION 48. IC 13-14-9-0.2 IS ADDED TO THE INDIANA
 17 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 18 **[EFFECTIVE JULY 1, 2023]: Sec. 0.2. This chapter (as effective**
 19 **January 1, 2023) continues to apply after June 30, 2023, to a**
 20 **rulemaking action that is commenced under this chapter before**
 21 **July 1, 2023.**

22 SECTION 49. IC 13-14-9-1, AS AMENDED BY P.L.133-2012,
 23 SECTION 89, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2023]: Sec. 1. (a) Except as provided in ~~sections 8 and section~~
 25 14 of this chapter, this chapter applies to the following:

26 (1) The board.

27 (2) The underground storage tank financial assurance board
 28 established by IC 13-23-11-1.

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

31 SECTION 50. IC 13-14-9-2 IS REPEALED [EFFECTIVE JULY
 32 1, 2023]. ~~Sec. 2. Except as provided in sections 4.5, 7, 8, and 14 of this~~
 33 ~~chapter, a board may not adopt a rule under this chapter until the board~~
 34 ~~has conducted at least two (2) public comment periods, each of which~~
 35 ~~must be at least thirty (30) days in length.~~

36 SECTION 51. IC 13-14-9-3, AS AMENDED BY P.L.100-2006,
 37 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2023]: Sec. 3. (a) ~~Except as provided in subsection (b);~~
 39 **Before publication of the notice described in IC 4-22-2-23, the**
 40 **department shall may provide notice in the Indiana Register of the first**
 41 **a public comment period required by section 2 of this chapter.**
 42 **regarding potential rulemaking.** A notice provided under this section

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- 1 must do the following:
- 2 (1) Identify the authority under which the proposed rule is to be
- 3 adopted.
- 4 (2) Describe the subject matter and the basic purpose of the
- 5 proposed rule. The description required by this subdivision must:
- 6 (A) list all alternatives being considered by the department
- 7 at the time of the notice;
- 8 (B) state whether each alternative listed under clause (A)
- 9 creates:
- 10 (i) a restriction or requirement more stringent than a
- 11 restriction or requirement imposed under federal law;
- 12 or
- 13 (ii) a restriction or requirement in a subject area in
- 14 which federal law does not impose restrictions or
- 15 requirements;
- 16 (C) state the extent to which each alternative listed under
- 17 clause (A) differs from federal law;
- 18 (D) include any information known to the department about
- 19 the potential fiscal impact of each alternative under clause
- 20 (A) that creates:
- 21 (i) a restriction or requirement more stringent than a
- 22 restriction or requirement imposed under federal law;
- 23 or
- 24 (ii) a restriction or requirement in a subject area in
- 25 which federal law does not impose restrictions or
- 26 requirements; and
- 27 (E) set forth the basis for each alternative listed under
- 28 clause (A).
- 29 (3) Describe the relevant statutory or regulatory requirements or
- 30 restrictions relating to the subject matter of the proposed rule
- 31 that exist before the adoption of the proposed rule.
- 32 (4) Request the submission of alternative ways to achieve the
- 33 purpose of the proposed rule.
- 34 (5) Request the submission of comments, including suggestions
- 35 of specific language for the proposed rule.
- 36 (6) Include a detailed statement of the issue to be addressed by
- 37 adoption of the proposed rule.
- 38 (b) ~~This section does not apply to rules adopted under~~
- 39 ~~IC 13-18-22-2, IC 13-18-22-3, or IC 13-18-22-4.~~
- 40 (c) ~~The notice required under subsection (a) shall be published~~
- 41 ~~electronically in the Indiana Register under procedures established by~~
- 42 ~~the publisher.~~

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1 SECTION 52. IC 13-14-9-4, AS AMENDED BY P.L.218-2016,
 2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2023]: Sec. 4. (a) ~~The department shall provide notice in the~~
 4 ~~Indiana Register of the second public comment period required by~~
 5 ~~section 2 of this chapter. A notice provided under this section In~~
 6 ~~addition to the requirements of IC 4-22-2-23 and (if applicable)~~
 7 ~~IC 4-22-2-24, the notice of public comment submitted by the~~
 8 ~~department to the publisher must do the following:~~

9 ~~(1) Contain the full text of the proposed rule, to the extent~~
 10 ~~required under IC 4-22-2-24(c).~~

11 ~~(2) (1) Contain a summary of the response of the department to~~
 12 ~~written comments submitted under section 3 of this chapter,~~
 13 ~~during the first public comment period. if applicable.~~

14 ~~(3) (2) Request the submission of comments, including~~
 15 ~~suggestions of specific amendments to the language contained~~
 16 ~~in the proposed rule.~~

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

19 ~~(5) (3) Identify each element of the proposed rule that imposes~~
 20 ~~a restriction or requirement on persons to whom the proposed~~
 21 ~~rule applies that:~~

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

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

26 ~~(6) (4) With respect to each element identified under subdivision~~
 27 ~~(5); (3), identify:~~

28 (A) the environmental circumstance or hazard that dictates
 29 the imposition of the proposed restriction or requirement to
 30 protect human health and the environment;

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

33 (C) the:

34 (i) estimated fiscal impact; and

35 (ii) expected benefits;

36 based on the extent to which the proposed rule is more
 37 stringent than the restrictions or requirements of federal
 38 law, or on the creation of restrictions or requirements in a
 39 subject area in which federal law does not impose
 40 restrictions or requirements.

41 ~~(7) (5) For any element of the proposed rule that imposes a~~
 42 ~~restriction or requirement that is more stringent than a restriction~~

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1 or requirement imposed under federal law or that applies in a
 2 subject area in which federal law does not impose restrictions or
 3 requirements, describe the availability for public inspection of
 4 all materials relied upon by the department in the development
 5 of the proposed rule, including, if applicable:

- 6 (A) health criteria;
- 7 (B) analytical methods;
- 8 (C) treatment technology;
- 9 (D) economic impact data;
- 10 (E) environmental assessment data;
- 11 (F) analyses of methods to effectively implement the
- 12 proposed rule; and
- 13 (G) other background data.

14 (b) The notice required under subsection (a):

15 (1) shall be published electronically in the Indiana Register
 16 under procedures established by the publisher; and

17 (2) if any element of the proposed rule to which the notice
 18 relates imposes a restriction or requirement that is more stringent
 19 than a restriction or requirement imposed under federal law;
 20 shall be submitted in an electronic format under IC 5-14-6 to the
 21 executive director of the legislative services agency, who shall
 22 present the notice to the legislative council established by
 23 IC 2-5-1.1-1.

24 (c) (b) If the notice provided by the department concerning a
 25 proposed rule identifies under subsection (a)(5), an element of the
 26 proposed rule that imposes a restriction or requirement more stringent
 27 than a restriction or requirement imposed under federal law, the
 28 proposed rule shall not become effective under this chapter until the
 29 adjournment sine die of the regular session of the general assembly that
 30 begins after the department provides the notice.

31 (d) (c) Subsections (b)(2) and (c) do **Subsection (b) does** not
 32 prohibit or restrict the commissioner, the department, or the board
 33 from:

- 34 (1) adopting ~~emergency~~ **provisional** rules under IC 4-22-2-37.1;
- 35 (2) taking emergency action under IC 13-14-10; or
- 36 (3) temporarily:

- 37 (A) altering ordinary operating policies or procedures; or
- 38 (B) implementing new policies or procedures;

39 in response to an emergency situation.

40 SECTION 53. IC 13-14-9-4.2, AS AMENDED BY P.L.123-2006,
 41 SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2023]: Sec. 4.2. Not less than fourteen (14) days before the

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1 date of preliminary adoption of a proposed rule by a board, the
 2 department shall make available to the board the ~~fi~~scat ~~imp~~act
 3 ~~statement~~ **latest version of the regulatory analysis** prepared by the
 4 ~~office of management and budget with respect to~~ **for** the proposed rule.
 5 under IC 4-22-2-28(c).

6 SECTION 54. IC 13-14-9-4.5 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4.5. (a) Except for a
 8 rule

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

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

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

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

15 ~~(2)~~ for which the commissioner has made a determination and
 16 prepared written findings under section 7 or 8 of this chapter;
 17 **IC 4-22-2-23 or (if applicable) IC 4-22-2-24;**

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

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

23 ~~(1)~~ text;

24 ~~(2)~~ summary; and

25 ~~(3)~~ fiscal analysis;

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

28 (c) The notice of a ~~third~~ public comment period that must be
 29 published in the Indiana Register under subsection (b) must request the
 30 submission of comments, including suggestions of specific
 31 amendments, that concern only the portion of the preliminarily adopted
 32 rule that is substantively different from the language contained in the
 33 proposed rule published in a ~~second~~ notice under section 4 of this
 34 chapter.

35 SECTION 55. IC 13-14-9-5, AS AMENDED BY P.L.123-2006,
 36 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2023]: Sec. 5. (a) A board may not adopt a rule until all of the
 38 following occur:

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

40 (2) The department, after approval of the proposed rule by the
 41 board under subsection (c), publishes the ~~following~~ **information**
 42 in the Indiana Register as ~~provided in IC 4-22-2-24(c)~~:

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

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

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

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

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

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

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

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

(2) be subject to additional comments under section ~~3~~ **4.5** of this chapter; ~~considering any written finding made by the commissioner under section 7 or 8 of this chapter~~; or

(3) be reconsidered at a subsequent board meeting in accordance with IC 4-22-2-26(d).

SECTION 56. IC 13-14-9-6, AS AMENDED BY P.L.123-2006, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 6. ~~In addition to the requirements of section 8 of this chapter~~, The department shall include the following in the written materials to be considered at the board meetings held under section 5(a)(1) and 5(a)(3) of this chapter:

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- 1 (1) The full text of the proposed rule, as most recently prepared
- 2 by the department.
- 3 (2) The written responses of the department to all comments
- 4 received:
- 5 (A) during the immediately preceding comment period for
- 6 a board meeting held under section 5(a)(1) of this chapter;
- 7 (B) during the immediately preceding board meeting under
- 8 section 5(a)(1) of this chapter for a board meeting held
- 9 under section 5(a)(3) of this chapter if a ~~third~~ **an additional**
- 10 public comment period is not required under section 4.5 of
- 11 this chapter; or
- 12 (C) during:
- 13 (i) a ~~third~~ **an additional** public comment period that
- 14 address the portion of the preliminarily adopted rule
- 15 that is substantively different from the language
- 16 contained in the proposed rule published in a ~~second~~
- 17 notice under section 4 of this chapter; and
- 18 (ii) the immediately preceding board meeting held
- 19 under section 5(a)(1) of this chapter;
- 20 for a board meeting held under section 5(a)(3) of this
- 21 chapter if a ~~third~~ **an additional** public comment period is
- 22 required under section 4.5 of this chapter.
- 23 (3) The full text of the ~~office of management and budget fiscal~~
- 24 **latest version of regulatory** analysis if a ~~fiscal analysis is~~
- 25 ~~required under IC 4-22-2-28.~~ **provided to the budget agency**
- 26 **and the office of management and budget under**
- 27 **IC 4-22-2-22.8.**
- 28 SECTION 57. IC 13-14-9-7 IS REPEALED [EFFECTIVE JULY
- 29 1, 2023]. Sec. 7. (a) Unless a board determines under section 5(c)(2) of
- 30 this chapter that a proposed rule should be subject to additional
- 31 comments, section 3 of this chapter does not apply to a rulemaking
- 32 action if the commissioner determines that the rulemaking policy
- 33 alternatives available to the department are so limited that the public
- 34 notice and comment period under section 3 of this chapter would
- 35 provide no substantial benefit to:
- 36 (1) the environment; or
- 37 (2) persons to be regulated or otherwise affected by the proposed
- 38 rule.
- 39 (b) If the commissioner makes a determination under subsection
- 40 (a), the commissioner shall prepare written findings under this section.
- 41 The full text of the commissioner's written findings shall be included
- 42 in the public notice provided under section 4 of this chapter.

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1 SECTION 58. IC 13-14-9-8, AS AMENDED BY P.L.6-2012,
 2 SECTION 103, IS AMENDED TO READ AS FOLLOWS
 3 [EFFECTIVE JULY 1, 2023]: Sec. 8. (a) Except as provided in
 4 subsection (g); unless a board determines that a proposed rule should
 5 be subject to additional comments or makes a determination described
 6 in subsection (f); sections 2 through 7 and sections 9 through 14 of this
 7 chapter do not apply to a rulemaking action if the commissioner
 8 determines that:

9 (1) the proposed rule constitutes:

10 (A) an adoption or incorporation by reference of a federal
 11 law, regulation, or rule that:

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

13 (ii) contains no amendments that have a substantive
 14 effect on the scope or intended application of the
 15 federal law or rule;

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

18 (C) an amendment to an existing Indiana rule, the primary
 19 and intended purpose of which is to clarify the existing rule;
 20 and

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

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

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

28 (C) Affording interested or affected parties the opportunity
 29 to develop evidence in the record collected under sections
 30 3 and 4 of this chapter.

31 (b) If the commissioner makes a determination under subsection
 32 (a), the commissioner shall prepare written findings under this section.
 33 The full text of the commissioner's written findings shall be included
 34 in:

35 (1) the notice of adoption of the proposed rule; and

36 (2) the written materials to be considered by the board at the
 37 public hearing held under this section.

38 (c) The notice of adoption of a proposed rule under this section
 39 must:

40 (1) be published in the Indiana Register; and

41 (2) include the following:

42 (A) Draft rule language that includes the language

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- 1 described in subsection (a)(1):
- 2 (B) A written comment period of at least thirty (30) days.
- 3 (C) A notice of public hearing before the appropriate board:
- 4 (d) The department shall include the following in the written
- 5 materials to be considered by the board at the public hearing referred
- 6 to in subsection (c):
- 7 (1) The full text of the proposed rule as most recently prepared
- 8 by the department.
- 9 (2) Written responses of the department to written comments
- 10 received during the comment period referred to in subsection (c):
- 11 (3) The commissioner's findings under subsection (b):
- 12 (e) At the public hearing referred to in subsection (c), the board
- 13 may:
- 14 (1) adopt the proposed rule;
- 15 (2) adopt the proposed rule with amendments;
- 16 (3) reject the proposed rule;
- 17 (4) determine that additional public comment is necessary; or
- 18 (5) determine to reconsider the proposed rule at a subsequent
- 19 board meeting.
- 20 (f) If the board determines under subsection (e) that additional
- 21 public comment is necessary, the department shall publish a second
- 22 notice in accordance with section 4 of this chapter and complete the
- 23 rulemaking in accordance with this chapter.
- 24 (g) If the board adopts the proposed rule with amendments under
- 25 subsection (e)(2), the amendments must meet the logical outgrowth
- 26 requirements of section 10 of this chapter, except that the board, in
- 27 determining whether the amendments are a logical outgrowth of
- 28 comments provided to the board, and in considering whether the
- 29 language of comments provided to the board fairly apprised interested
- 30 persons of the specific subjects and issues contained in the
- 31 amendments, shall consider the comments provided to the board at the
- 32 public hearing referred to in subsection (e)(2)(C):
- 33 (h) This subsection applies to that part of a rule adopted under this
- 34 section that directly corresponds to and is based on a federal law, rule,
- 35 or regulation that is stayed or repealed, invalidated, vacated, or
- 36 otherwise nullified by a legislative, an administrative, or a judicial
- 37 action described in subdivision (1), (2), or (3): If:
- 38 (1) a proposed rule is adopted by a board under subsection (e)(1)
- 39 based on a determination by the commissioner under subsection
- 40 (a)(1)(A) and the federal law, rule, or regulation on which the
- 41 adopted rule is based is later repealed or otherwise nullified by
- 42 legislative or administrative action; then that part of the adopted

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1 rule that corresponds to the repealed or nullified federal law;
 2 rule; or regulation is void as of the effective date of the
 3 legislative or administrative action repealing or otherwise
 4 nullifying the federal law, rule, or regulation;

5 (2) a board adopts a proposed rule under subsection (e)(1) that
 6 is based on a determination by the commissioner under
 7 subsection (a)(1)(A) and the federal law, rule, or regulation on
 8 which the adopted rule is based is later invalidated, vacated, or
 9 otherwise nullified by a judicial decree, order, or judgment of a
 10 state or federal court whose decisions concerning such matters
 11 have force and effect in Indiana:

12 (A) then that part of the rule that corresponds to the
 13 invalidated, vacated, or otherwise nullified federal law, rule,
 14 or regulation shall not be enforced by the commissioner or
 15 any other person during the time in which an appeal of the
 16 judicial decree, order, or judgment can be commenced or is
 17 pending; and

18 (B) either:

19 (i) that part of the adopted rule that corresponds to the
 20 invalidated, vacated, or otherwise nullified federal law,
 21 rule, or regulation is void as of the date that the judicial
 22 decree, order, or judgment becomes final and
 23 unappealable; or

24 (ii) enforcement of the adopted rule is restored if the
 25 judicial decree, order, or judgment is reversed, vacated,
 26 or otherwise nullified on appeal; and

27 (3) ~~the~~ **If the commissioner determines that a** federal law,
 28 regulation, or rule:

29 **(1)** that is the basis of a rule that is adopted under
 30 subsection (e)(1) **by the board**; and based on a
 31 determination by the commissioner under subsection
 32 (a)(1)(A)

33 **(2)** is stayed by an administrative or a judicial order pending
 34 an administrative or a judicial action regarding the validity
 35 of the federal law, rule, or regulation;

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

39 SECTION 59. IC 13-14-9-9 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 9. After complying
 41 with sections 2 4 through 8 6 of this chapter, the board may, at the
 42 board meeting held under section 5(a)(3) of this chapter:

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- 1 (1) adopt a rule that is identical to the proposed rule published
- 2 under section 5(a)(2) of this chapter;
- 3 ~~(2) adopt the proposed rule with amendments that meet the~~
- 4 ~~criteria set forth in section 10 of this chapter;~~
- 5 ~~(3) (2) recommend amendments to the proposed rule; that do not~~
- 6 ~~meet the criteria set forth in section 10 of this chapter;~~
- 7 ~~(4) (3) reject the proposed rule; or~~
- 8 ~~(5) (4) reconsider the proposed rule at a subsequent board~~
- 9 ~~meeting in accordance with IC 4-22-2-26(d).~~

10 SECTION 60. IC 13-14-9-10 IS REPEALED [EFFECTIVE JULY
 11 1, 2023]. Sec. ~~10~~: (a) A board may amend a proposed rule at a board
 12 meeting held under section 5(a)~~(3)~~ of this chapter and adopt the
 13 amended rule under section 9(2) of this chapter if the amendments are
 14 a logical outgrowth of:

- 15 (1) the proposed rule as published under section 5(a)(2) of this
- 16 chapter; and
- 17 (2) any comments provided to the board at the meeting held
- 18 under section 5(a)~~(3)~~ of this chapter.

19 (b) In determining; for the purposes of this section; whether an
 20 amendment is a logical outgrowth of the proposed rule and any
 21 comments; the board shall consider:

- 22 (1) whether the language of:
 - 23 (A) the proposed rule as published under section 5(a)(2) of
 - 24 this chapter; and
 - 25 (B) any comments provided to the board at the meeting held
 - 26 under section 5(a)~~(3)~~ of this chapter;
- 27 fairly apprised interested persons of the specific subjects and
- 28 issues contained in the amendment; and
- 29 (2) whether the interested parties were allowed an adequate
- 30 opportunity to be heard by the board.

31 SECTION 61. IC 13-14-9-11 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 11. If the board
 33 recommends amendments to a proposed rule under section 9~~(3)~~ 9(2) of
 34 this chapter, the full text of the proposed rule and accompanying
 35 amendments shall be published in accordance with section 5(a)(2) of
 36 this chapter. After that publication, the board shall hold another board
 37 meeting on the proposed rule under section 5(a)(3) of this chapter.

38 SECTION 62. IC 13-14-9-12, AS AMENDED BY P.L.204-2007,
 39 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2023]: Sec. 12. The board may reject a proposed rule under
 41 section 9~~(4)~~ 9 of this chapter if one (1) of the following conditions
 42 exists:

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- 1 (1) The following occurs or has occurred:
- 2 (A) under section 8 of this chapter; sections 3 and 4 of this
- 3 chapter did not apply to the proposed rule; and
- 4 (B) either:
- 5 (i) (1) The board determines that necessary
- 6 amendments to the proposed rule will affect persons
- 7 that reasonably require an opportunity to comment
- 8 under section 4 of this chapter. ~~considering the criteria~~
- 9 ~~set forth in section 8(a)(2) of this chapter; or~~
- 10 (ii) (2) The board determines that due to the
- 11 fundamental or inherent structure or content of the
- 12 proposed rule, the only reasonably anticipated method
- 13 of developing a rule acceptable to the board is to
- 14 require the department to redraft the rule and to obtain
- 15 the public comments under section 4 of this chapter.
- 16 (2) The following occurs or has occurred:
- 17 (A) the proposed rule was subject to sections 3 and 4 of this
- 18 chapter; and
- 19 (B) either:
- 20 (i) the board makes a determination set forth in
- 21 subdivision (1)(B)(i) or (1)(B)(ii); or
- 22 (ii) (3) The board determines that, due to a procedural
- 23 or other defect in the implementation of ~~the applicable~~
- 24 **rulemaking** requirements, ~~under sections 3 and 4 of~~
- 25 ~~this chapter~~, an interested or affected party will be
- 26 unfairly and substantially prejudiced if the public
- 27 comment period under section 4 of this chapter is not
- 28 again afforded and that no reasonable alternative
- 29 method to obtain public comments is available to the
- 30 interested or affected party other than the public
- 31 comment period under section 4 of this chapter.
- 32 SECTION 63. IC 13-14-9-14, AS AMENDED BY P.L.133-2012,
- 33 SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 34 JULY 1, 2023]: Sec. 14. (a) Except as provided in subsection (g),
- 35 sections 1 through 13 of this chapter do not apply to a rule adopted
- 36 under this section.
- 37 (b) The board may use the procedures in this section to adopt a
- 38 rule to establish new water quality standards for a community served
- 39 by a combined sewer that has:
- 40 (1) an approved long term control plan; and
- 41 (2) an approved use attainability analysis that supports the use of
- 42 a CSO wet weather limited use subcategory established under

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- 1 IC 13-18-3-2.5.
- 2 (c) After the department approves the long term control plan and
3 use attainability analysis, the department shall publish in the Indiana
4 Register a notice of adoption of a proposed rule to establish a CSO wet
5 weather limited use subcategory for the area defined by the approved
6 use attainability analysis.
- 7 (d) The notice under subsection (c) must include the following:
- 8 (1) Suggested rule language that amends the designated use to
9 allow for a CSO wet weather limited use subcategory in
10 accordance with IC 13-18-3-2.5.
- 11 (2) A written comment period of at least thirty (30) days.
- 12 (3) A notice of public hearing before the board.
- 13 (e) The department shall include the following in the written
14 materials to be considered by the board at the public hearing referred
15 to in subsection (d)(3):
- 16 (1) The full text of the proposed rule as most recently prepared
17 by the department.
- 18 (2) Written responses of the department to written comments
19 received during the comment period referred to in subsection
20 (d)(2).
- 21 (3) The letter prepared by the department approving the long
22 term control plan and use attainability analysis.
- 23 (f) At the public hearing referred to in subsection (d)(3), the board
24 may:
- 25 (1) adopt the proposed rule to establish a new water quality
26 standard amending the designated use to allow for a CSO wet
27 weather limited use subcategory;
- 28 (2) adopt the proposed rule with amendments;
- 29 (3) reject the proposed rule; or
- 30 (4) determine to reconsider the proposed rule at a subsequent
31 board meeting.
- 32 (g) If the board adopts the proposed rule with amendments under
33 subsection (f)(2), the amendments must meet the **substantially similar**
34 **or** logical outgrowth requirements of ~~section 10 of this chapter, except~~
35 ~~that~~ **IC 4-22-2-29(c)**. The board, in determining whether the
36 amendments are a logical outgrowth of comments provided to the
37 board, and in considering whether the language of comments provided
38 to the board fairly apprised interested persons of the specific subjects
39 and issues contained in the amendments, shall consider the comments
40 provided to the board at the public hearing referred to in subsection
41 (d)(3).
- 42 (h) The department shall submit a new water quality standard

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1 established in a rule adopted under subsection (f) to the United States
2 Environmental Protection Agency for approval.

3 SECTION 64. IC 13-14-9-15 IS ADDED TO THE INDIANA
4 CODE AS A NEW SECTION TO READ AS FOLLOWS
5 [EFFECTIVE JULY 1, 2023]: **Sec. 15. Rules adopted in accordance
6 with this chapter by the department of environmental management
7 or a board that has rulemaking authority under this title expire as
8 provided in IC 4-22-2.6.**

9 SECTION 65. IC 13-14-9-16 IS ADDED TO THE INDIANA
10 CODE AS A NEW SECTION TO READ AS FOLLOWS
11 [EFFECTIVE JULY 1, 2023]: **Sec. 16. (a) For a rule document
12 subject to this chapter, the one (1) year period established under
13 IC 4-22-2-25 in which to adopt a rule and obtain the approval or
14 deemed approval of the governor commences on the date that the
15 initial comment period notice for the rule document is published in
16 the Indiana Register under section 4 of this chapter.**

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

21 **(1) the reasons why the rule was not adopted and the
22 expected date the rule will be completed; and**

23 **(2) the expected date the rule will be approved or deemed
24 approved by the governor or withdrawn under IC 4-22-2-41.**

25 **(c) If a rule is not approved before the later of:**

26 **(1) one (1) year after the department publishes the initial
27 notice of intent under this chapter; or**

28 **(2) the expected date contained in a notice concerning the
29 rule that is provided to the publisher under subsection (b);**

30 **a later approval or deemed approval is ineffective, and the rule
31 may become effective only through another rulemaking action
32 initiated under this chapter.**

33 SECTION 66. IC 13-14-9.5 IS REPEALED [EFFECTIVE JULY
34 1, 2023]. (Expiration and Readoption of Administrative Rules).

35 SECTION 67. IC 13-19-3-3, AS AMENDED BY P.L.120-2022,
36 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
37 UPON PASSAGE]: **Sec. 3. (a) As used in this section and section 3.1
38 of this chapter, "coal combustion residuals" means fly ash, bottom ash,
39 boiler slag, and flue gas desulfurization materials generated from
40 burning coal for the purpose of generating electricity by electric
41 utilities and independent power producers.**

42 **(b) As used in The following definitions apply throughout this**

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1 section:

2 (1) "Federal CCR rule" refers to 40 CFR 257, Subpart D, the
3 federal standards for the disposal of coal combustion residuals
4 in landfills and surface impoundments.

5 (2) "Legacy generation resource" means an electric
6 generating facility that is directly or indirectly owned by a
7 corporation that was originally formed for the purpose of
8 providing power to the federal government for use in the
9 nation's defense or in furtherance of national interests. The
10 term includes the Ohio Valley Electric Corporation.

11 (c) The board ~~may~~ shall adopt rules under section 1(a)(1) of this
12 chapter concerning coal combustion residuals. The rules adopted
13 under this subsection:

14 (1) ~~that are~~ shall be consistent with the regulations of the United
15 States Environmental Protection Agency concerning standards
16 for the disposal of coal combustion residuals in landfills and
17 surface impoundments, as set forth in the federal CCR rule;

18 (2) shall not impose a restriction or requirement that is more
19 stringent than the corresponding restriction or requirement
20 imposed under the federal CCR rule; and

21 (3) shall not impose a restriction or requirement that is not
22 imposed by the federal CCR rule.

23 (d) The department shall do the following:

24 (1) Establish a state permit program under Section 2301 of the
25 federal Water Infrastructure Improvements for the Nation Act
26 (42 U.S.C. 6945(d)) for the implementation in Indiana of the
27 federal CCR rule.

28 (2) Submit to the administrator of the United States
29 Environmental Protection Agency under 42 U.S.C.
30 6945(d)(1)(A) evidence of the state permit program.

31 (3) Take other necessary or appropriate actions to obtain
32 approval of the state permit program.

33 (e) Not later than May 15, 2021, the department shall notify the
34 United States Environmental Protection Agency of its intention to
35 establish a state permit program described in subsection (d)(1) and to
36 seek approval of the state permit program under 42 U.S.C. 6945(d)(1).

37 (f) Under IC 4-22-2 and IC 13-14-9:

38 (1) the department shall initiate rulemaking for the establishment
39 of the state permit program not more than sixty (60) days after
40 the effective date of the SECTION of Senate Enrolled Act
41 271-2021 amending this section; and

42 (2) the board shall adopt a final rule for the establishment of the

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- 1 state permit program not more than sixteen (16) months after
 2 initiation of the rulemaking under subdivision (1).
- 3 (g) The state permit program established under this section must
 4 not establish requirements for any surface impoundment of coal
 5 combustion residuals unless and until the state permit program is
 6 approved by the administrator of the United States Environmental
 7 Protection Agency under 42 U.S.C. 6945(d)(1). **The authority of the**
 8 **department to establish requirements under the state permit**
 9 **program established under this section is the only authority the**
 10 **department has to establish requirements for a surface**
 11 **impoundment of coal combustion residuals located on the grounds**
 12 **of a legacy generation resource.**
- 13 (h) The definitions set forth in Section 257.53 of the federal CCR
 14 rule, as in effect January 1, 2021, apply throughout subsection (i).
- 15 (i) The department shall charge the following fees under the state
 16 permit program established under this section:
- 17 (1) An initial one (1) time permit fee of twenty thousand five
 18 hundred dollars (\$20,500) for each surface impoundment of coal
 19 combustion residuals regulated under the state permit program.
- 20 (2) An annual fee of twenty thousand five hundred dollars
 21 (\$20,500) for each surface impoundment of coal combustion
 22 residuals regulated under the state permit program that has not
 23 completed closure in accordance with Section 257.102 of the
 24 federal CCR rule. The duty to pay the fee established by this
 25 subdivision does not apply on an annual basis until three
 26 hundred sixty-five (365) days after the initial one (1) time permit
 27 fee established by subdivision (1) has been assessed.
- 28 (3) An annual fee of ten thousand dollars (\$10,000) for each
 29 surface impoundment of coal combustion residuals regulated
 30 under the state permit program that has been closed and for
 31 which post-closure care has been initiated and is still required in
 32 accordance with Section 257.104 of the federal CCR rule. The
 33 duty to pay the fee established by this subdivision does not apply
 34 on an annual basis until three hundred sixty-five (365) days after
 35 the initial one (1) time permit fee established by subdivision (1)
 36 has been assessed.
- 37 Fees collected under this subsection shall be deposited in the CCR
 38 program fund established by section 3.2 of this chapter.
- 39 (j) Not later than July 1, 2027, and before the end of each
 40 succeeding period of five (5) years, the board shall review the:
- 41 (1) costs to the department of operating the state permit program
 42 established under this section; and

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1 (2) revenue from the fees charged under subsection (i);
 2 as provided in IC 13-16-1-4. If the board determines that the revenue
 3 described in subdivision (2) is inadequate or excessive in relation to the
 4 costs described in subdivision (1), the board shall, under IC 13-16-1-2,
 5 change the amount of one (1) or more of the fees established under
 6 subsection (i).

7 (k) Upon the effective date that the board adopts rules to
 8 implement the federal CCR rule and subject to subsection (i), annual
 9 fees for CCR landfills that were previously regulated as restricted waste
 10 sites shall be deposited in the CCR program fund established by section
 11 3.2 of this chapter.

12 SECTION 68. IC 13-20-10.5-1, AS ADDED BY P.L.189-2011,
 13 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2023]: Sec. 1. (a) A person may not ~~after June 30, 2011~~, start:

15 (1) construction of:

16 (A) a biomass anaerobic digestion facility; or

17 (B) a biomass gasification facility; or

18 (2) expansion of:

19 (A) a biomass anaerobic digestion facility; or

20 (B) a biomass gasification facility;

21 without obtaining prior approval of the department.

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

29 SECTION 69. IC 14-10-2-5, AS AMENDED BY P.L.164-2020,
 30 SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2023]: Sec. 5. (a) The department may adopt ~~emergency~~ rules
 32 under ~~IC 4-22-2-37.1~~ **IC 4-22-2** to carry out the duties of the
 33 department under the following:

34 (1) IC 14-9.

35 (2) This article.

36 (3) IC 14-11.

37 (4) IC 14-12-2.

38 (5) IC 14-14.

39 (6) IC 14-15.

40 (7) IC 14-17-3.

41 (8) IC 14-18, except IC 14-18-6 and IC 14-18-8.

42 (9) IC 14-19-1 and IC 14-19-8.

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- 1 (10) IC 14-21.
- 2 (11) IC 14-22-3, IC 14-22-4, and IC 14-22-5.
- 3 (12) IC 14-23-1.
- 4 (13) IC 14-24.
- 5 (14) IC 14-25, except IC 14-25-8-3 and IC 14-25-13.
- 6 (15) IC 14-26.
- 7 (16) IC 14-27.
- 8 (17) IC 14-28.
- 9 (18) IC 14-29.
- 10 (19) IC 14-35-1, IC 14-35-2, and IC 14-35-3.
- 11 (20) IC 14-37.
- 12 (21) IC 14-38, except IC 14-38-3.

13 (b) ~~A~~ **An emergency rule** adopted under subsection (a) **(as**
 14 **effective before July 1, 2023)** expires not later than one (1) year after
 15 the rule is accepted for filing by the publisher of the Indiana Register.

16 (c) A person who violates:

- 17 (1) an emergency rule adopted by the department **under**
 18 **IC 4-22-2-37.1 before July 1, 2023; or**
- 19 (2) **an interim rule adopted by the department under**
 20 **IC 4-22-2-37.2 after June 30, 2023;**

21 **to carry out a provision described in subsection (a)** commits a Class
 22 C infraction, unless otherwise specified under state law.

23 SECTION 70. IC 15-16-4-31, AS ADDED BY P.L.2-2008,
 24 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2023]: Sec. 31. As used in this chapter, "pesticide for use by
 26 prescription only" means any pesticide that:

- 27 (1) the board has found to be more hazardous than a restricted
 28 use pesticide so that any specific use and application must be
 29 determined and prescribed by a qualified pest management
 30 specialist approved by the state chemist; **and**
- 31 (2) **is designated as a pesticide for use by prescription only in**
 32 **a rule of the board or a law enacted by the general assembly.**

33 SECTION 71. IC 15-16-4-37, AS ADDED BY P.L.2-2008,
 34 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2023]: Sec. 37. As used in this chapter, "restricted use
 36 pesticide" means **the following**:

- 37 (1) Any pesticide classified as a restricted use pesticide by the
 38 administrator of the United States Environmental Protection
 39 Agency ~~or~~ **(as of March 31, 2023).**
- 40 (2) **A pesticide designated as a pesticide in a law enacted by**
 41 **the general assembly.**
- 42 (2) (3) **Subject to section 50 of this chapter,** a pesticide that the

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1 board has determined to be unduly hazardous to persons,
2 animals, plants, wildlife, waters, or lands other than the pests it
3 is intended to prevent, destroy, control, or mitigate.

4 **(4) All formulations containing methomyl (Chemical**
5 **Abstracts Service Reg. No. 16752-77-5).**

6 **(5) Any dicamba containing pesticide product that:**

7 **(A) contains a dicamba active ingredient concentration**
8 **greater than or equal to six and one-half percent (6.5%);**
9 **and**

10 **(B) is intended for agricultural production uses but is**
11 **not labeled solely for use on turf or other**
12 **nonagricultural use sites.**

13 SECTION 72. IC 15-16-4-50, AS AMENDED BY P.L.99-2012,
14 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2023]: Sec. 50. (a) The board may ~~adopt rules under IC 4-22-2~~
16 ~~to do the following:~~

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

26 ~~(A)~~ **(1) sale;**

27 ~~(B)~~ **(2) distribution; or**

28 ~~(C)~~ **(3) use;**

29 of the pesticide by any person are necessary to prevent undue hazards
30 to persons, animals, wildlife, lands, or waters, other than the pests that
31 they are intended to prevent, destroy, control, or mitigate. **After**
32 **considering the factors enumerated in this subsection, the board**
33 **shall make findings and recommendations concerning the control**
34 **of the substance if it finds the substance. If any substance is**
35 **designated or reclassified to a more restrictive schedule as a**
36 **pesticide under federal law and notice is given to the board, the**
37 **board shall recommend similar control of the substance under this**
38 **article in the board's report to the general assembly, unless the**
39 **board objects to inclusion or rescheduling. In that case, the board**
40 **shall publish the reasons for objection and afford all interested**
41 **parties an opportunity to be heard. At the conclusion of the**
42 **hearing, the board shall publish its findings in the Indiana**

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

4 (1) Reclassify a pesticide:

5 (A) from a more restrictive classification to a less
6 restrictive classification; or

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

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

32 (2) Provide for the safe:

33 (A) handling;

34 (B) transportation;

35 (C) storage;

36 (D) display;

37 (E) distribution;

38 (F) disposal; and

39 (G) production;

40 of pesticide products and pesticide containers.

41 (3) Restrict or prohibit the use of certain types of containers or
42 packages for specific pesticides. The restrictions may apply to

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1 the:

2 (A) type of construction;

3 (B) strength; or

4 (C) size;

5 to alleviate danger of spillage, breakage, or misuse.

6 ~~(b) The board may adopt by reference the restricted use~~

7 ~~classification of a pesticide that is maintained by the United States~~

8 ~~Environmental Protection Agency.~~

9 (c) The board may adopt rules **under IC 4-22-2** to do the

10 following:

11 (1) Determine the time and conditions of the:

12 (A) sale;

13 (B) distribution; or

14 (C) use;

15 of pesticide products.

16 (2) Require that any or all pesticide products be purchased,

17 possessed, or used only under:

18 (A) permit;

19 (B) certificate;

20 (C) license; or

21 (D) registration;

22 of the state chemist or under certain conditions or in certain

23 quantities or concentrations.

24 (3) Require all persons issued:

25 (A) permits;

26 (B) certificates;

27 (C) licenses; or

28 (D) registrations;

29 under this subsection to maintain records as to the use of the

30 pesticide products.

31 **(d) A rule adopted under this chapter that becomes effective**

32 **after June 30, 2023, may not impose a restriction or requirement**

33 **more stringent than a restriction or requirement imposed under**

34 **federal law unless the restriction or requirement is specifically**

35 **authorized by Indiana law.**

36 (e) The state chemist shall maintain a list of each class of

37 pesticides adopted by Indiana law or board rule on the website for

38 the state chemist. Failure to include a pesticide on the list does not

39 exempt a person from compliance with a law or rule for a pesticide

40 designated by law or rule.

41 SECTION 73. IC 15-16-4-52, AS ADDED BY P.L.2-2008,

42 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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1 JULY 1, 2023]: Sec. 52. The state chemist may adopt rules under
 2 IC 4-22-2 to administer this chapter, including rules providing for the
 3 following:

4 (1) The collection and examination of samples of pesticide
 5 products.

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

8 (3) The issuance of permits to purchase, possess, or use
 9 "restricted use pesticides" and "pesticides for use by prescription
 10 only".

11 (4) Determining standards of coloring or discoloring for
 12 pesticide products and to subject pesticide products to the
 13 requirements of section 57 of this chapter.

14 **A rule described in this section that becomes effective after June**
 15 **30, 2023, may not impose a restriction or requirement concerning**
 16 **pesticides more stringent than a restriction or requirement**
 17 **imposed under federal law unless the restriction or requirement is**
 18 **specifically authorized by Indiana law.**

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

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

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

31 (3) A pesticide product if the composition of the product differs
 32 from the composition as represented in connection with its
 33 registration. However, at the discretion of the state chemist, a
 34 change in the labeling or formula of a pesticide may be made
 35 within a registration period without requiring reregistration of
 36 the product.

37 (4) Any pesticide product (except a bulk pesticide or a pesticide
 38 in a container designed and constructed to accommodate the
 39 return and refill of the container) unless it is in the registrant's or
 40 the manufacturer's unbroken immediate container, and there is
 41 affixed to that container, and to any outside container or wrapper
 42 of the retail package through which the required information on

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- 1 the immediate container cannot be clearly read, a label bearing:
- 2 (A) the name and address of the manufacturer, registrant, or
- 3 person for whom manufactured;
- 4 (B) the name, brand, or trademark under which the pesticide
- 5 product is sold; and
- 6 (C) the net weight or measure of the content, subject,
- 7 however, to reasonable variations as the state chemist may
- 8 permit.
- 9 (5) Any pesticide product that is adulterated or misbranded.
- 10 (6) Any pesticide product in containers violating rules adopted
- 11 under section ~~50(a)(3)~~ **50(b)(3)** of this chapter. Pesticides found
- 12 in containers that are unsafe due to damage may be seized and
- 13 impounded.
- 14 (7) A highly volatile herbicide except on written permission by
- 15 the state chemist.
- 16 (8) Any bulk pesticide unless it is accompanied in all transfers
- 17 of custody or ownership by or held in storage vessels to which is
- 18 affixed a label bearing the information specified in subdivision
- 19 (4).
- 20 (9) Any pesticide that violates the Federal Insecticide, Fungicide,
- 21 and Rodenticide Act (7 U.S.C. 136 et seq.) or regulations
- 22 adopted under the Act.

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

31 SECTION 74. IC 25-1-5.3 IS ADDED TO THE INDIANA CODE
 32 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2023]:

- 34 **Chapter 5.3. Failure to Enact Licensure Rules**
- 35 **Sec. 1. The following definitions apply throughout this**
 36 **chapter:**
- 37 (1) "Agency" has the meaning set forth in IC 25-1-5-2.
 - 38 (2) "Applicant" has the meaning set forth in IC 25-1-5-11.
 - 39 (3) "Board" has the meaning set forth in IC 25-1-5-2.
 - 40 (4) "Compliant", with respect to a licensure rule, means a
 - 41 licensure rule that the agency or a board has adopted.
 - 42 (5) "Enactment date" means the date on which a statute



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1 requires rulemaking for a licensure rule to become effective
2 or otherwise requires rulemaking to commence.

3 (6) "Executive director" refers to the individual described in
4 IC 25-1-5-5.

5 (7) "Licensee" has the meaning set forth in IC 25-1-5-11.

6 (8) "Licensure rule" means a rule that:

7 (A) relates to the issuance of a license, certificate,
8 registration, or permit, or a requirement or prerequisite
9 for obtaining a license, or keeping a license in good
10 standing; and

11 (B) is required by statute to be adopted by the agency or
12 a board.

13 (9) "Material detriment" means:

14 (A) an inability to obtain a license, certification, permit,
15 or other credential from the agency or a board;

16 (B) an inability to:

17 (i) practice;

18 (ii) perform a procedure; or

19 (iii) engage in a particular professional activity in
20 Indiana or another jurisdiction; or

21 (C) any other substantial burden to professional or
22 business interests.

23 (10) "Noncompliant", with respect to a licensure rule, means
24 a licensure rule that the agency or a board has not adopted
25 as an interim rule under IC 4-22-2-37.2 within six (6) months
26 of the enactment date.

27 **Sec. 2. (a)** If a licensee or applicant believes that the agency or
28 a board has failed to adopt a licensure rule within six (6) months of
29 the enactment date, an applicant or licensee who has suffered a
30 material detriment as a result of a noncompliant licensure rule
31 may seek damages from the agency or board by bringing an action
32 in a court of competent jurisdiction.

33 (b) A court shall not certify a class in any matter seeking
34 damages under this section.

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

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

40 (2) Damages equal to the amount of the material detriment
41 caused by the noncompliant licensure rule, including
42 prospective damages through the date established under

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1 **subdivision (1).**
2 **(3) Court costs and attorney's fees.**
3 **(d) IC 34-13-3 applies to an action brought under this section.**
4 SECTION 75. IC 27-1-44.5-11, AS ADDED BY P.L.195-2021,
5 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
6 JULY 1, 2023]: Sec. 11. (a) The department shall adopt ~~emergency~~
7 rules under ~~IC 4-22-2-37.1~~ **IC 4-22-2** to implement this chapter. The
8 rules must include a requirement that health payer data sources submit
9 necessary information to the administrator. Rules enacted under this
10 subsection must cover all health payer data sources as follows:
11 (1) The department shall adopt rules that apply to health payers
12 regulated under IC 27.
13 (2) The office of the secretary of family and social services shall
14 adopt rules that apply to health payers regulated under IC 12.
15 (b) The department shall adopt ~~emergency~~ **provisional** rules under
16 IC 4-22-2-37.1 establishing a fee formula for data licensing and the
17 collection and release of claims data.
18 (c) The department may impose a civil penalty on a health payer
19 that is required to submit information under this chapter and fails to
20 comply. A civil penalty collected under this section must be deposited
21 in the department of insurance fund created by IC 27-1-3-28.
22 SECTION 76. IC 34-52-2-1.5 IS ADDED TO THE INDIANA
23 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
24 [EFFECTIVE JULY 1, 2023]: **Sec. 1.5. (a) In a proceeding under**
25 **IC 4-21.5-5 to judicially review a final order made by a state**
26 **agency, the court shall apply the same standard as an**
27 **administrative law judge under IC 4-21.5-3-27.5 regarding an**
28 **order for the payment of attorney's fees.**
29 (b) **An order for the payment of attorney's fees under this**
30 **section is not subject to sections 2 and 4 of this chapter.**
31 SECTION 77. [EFFECTIVE UPON PASSAGE] (a) **After June**
32 **30, 2023, a rule may be adopted as a provisional rule only for the**
33 **purposes and through the procedures in IC 4-22-2-37.1 (as effective**
34 **after June 30, 2023). Any additional authority in a statute outside**
35 **IC 4-22 to adopt rules through the emergency rulemaking**
36 **procedures in IC 4-22-2-37.1 (as effective before July 1, 2023, or**
37 **after June 30, 2023) is void. The code revision commission shall**
38 **provide in calendar year 2023 for the preparation of a bill for**
39 **introduction in the 2024 regular session of the general assembly**
40 **that removes language outside IC 4-22 permitting the adoption of**
41 **emergency rules.**
42 (b) **This SECTION expires January 1, 2024.**

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1 SECTION 78. **An emergency is declared for this act.**

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