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HOUSE BILL No. 1623

Proposed Changes to February 14, 2023 printing by AM162312

DIGEST OF PROPOSED AMENDMENT

Makes technical changes.

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 (e); 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
15 fiscal analysis previously performed by the legislative services agency
16 under IC 4-22-2.
17 (c) The OMB and the budget agency shall review a regulatory
18 analysis and proposed rule submitted by an agency under
19 IC 4-22-2-22.8. In preparing a cost benefit reviewing a regulatory
20 analysis and proposed rule under this section, the OMB shall
21 consider in its analysis any verified data provided voluntarily by
22 interested parties, regulated persons, and nonprofit corporations whose
23 members may be affected by the proposed rule. A cost benefit analysis

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1 prepared under this section is a public document ~~to~~ subject to the following:

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3 ~~(1)~~ This subsection **However, this section** does not
4 empower the OMB or an agency to require an interested party or
5 a regulated person to provide any materials, documents, or other
6 information. ~~in connection with a cost benefit analysis under this~~
7 ~~section.~~ If an interested party or a regulated person voluntarily
8 provides materials, documents, or other information to the OMB
9 or an agency, ~~in connection with a cost benefit analysis under~~
10 ~~this section,~~ the OMB or the agency, as applicable, shall ensure
11 the adequate protection of any:

12 ~~(A)~~ (1) information that is confidential under
13 IC 5-14-3-4; or

14 ~~(B)~~ (2) confidential and proprietary business plans and
15 other confidential information.

16 ~~(c)~~
17 If an agency has adopted rules to implement IC 5-14-3-4, interested
18 parties and regulated persons must submit the information in
19 accordance with the confidentiality rules adopted by the agency to
20 ensure proper processing of confidentiality claims. The OMB and any
21 agency involved in proposing the rule, or in administering the rule
22 upon the rule's adoption, shall exercise all necessary caution to avoid
23 disclosure of any confidential information supplied to the OMB or the
24 agency by an interested party or a regulated person.

25 (2) The OMB shall make the cost benefit analysis and other
26 related public documents available to interested parties,
27 regulated persons, and nonprofit corporations whose members
28 may be affected by the proposed rule at least thirty (30) days
29 before presenting the cost benefit analysis to the governor and
30 the legislative council under subsection (a):

31 (d) If the OMB or an agency is unable to obtain verified data for
32 the cost benefit analysis described in subsection (c), the OMB shall
33 state in the cost benefit analysis which data were unavailable for
34 purposes of the cost benefit analysis:

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

36 (1) an adoption or incorporation by reference of a federal law,
37 regulation, or rule that has no substantive effect on the scope or
38 intended application of the federal law or rule; or

39 (2) a technical amendment with no substantive effect on an
40 existing Indiana rule;

41 the OMB may not prepare a cost benefit analysis of the rule under this
42 section. The agency shall submit the proposed rule to the OMB with a
43 statement explaining how the proposed rule meets the requirements of
44 this subsection. If the OMB finds that the rule meets the requirements
45 of this subsection, the OMB shall provide its findings to the governor
46 and to the legislative council in an electronic format under IC 5-14-6.
47 If the agency amends or modifies the proposed rule after the OMB
48 finds that a cost benefit analysis may not be prepared for the rule, the
49 agency shall resubmit the proposed rule to the OMB either for a new

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1 determination that the rule meets the requirements of this subsection,
 2 or for the OMB to prepare a cost benefit analysis of the rule under this
 3 section:

4 SECTION 2. IC 4-21.5-2-8 IS ADDED TO THE INDIANA CODE
 5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 6 1, 2023]: **Sec. 8. The amendments made to IC 4-21.5-3-27.5 in the
 7 2023 session of the general assembly only apply to agency actions
 8 commenced under IC 4-21.5-3 after June 30, 2023.**

9 SECTION 3. IC 4-21.5-3-27.5, AS ADDED BY P.L.199-2021,
 10 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2023]: Sec. 27.5. In a proceeding under this chapter
 12 concerning an agency action, the administrative law judge shall order
 13 the agency to pay the reasonable attorney's fees incurred in the
 14 proceeding by the party challenging the agency action if the party
 15 challenging the agency action proves, by a preponderance of the
 16 evidence, that:

- 17 (1) the agency's action was frivolous or groundless; or
- 18 (2) the agency pursued the action in bad faith;
- 19 **(3) the agency has failed to demonstrate that the agency**
- 20 **action is based on a standard or an interpretation of a**
- 21 **standard that has the force of law; or**
- 22 **(4) the agency has failed to demonstrate that the agency**
- 23 **acted within its legal authority.**

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

- 28 (1) The amendments made to sections 13, 19, 23, 25, and 28 of
 29 this chapter apply to a rulemaking action that commences after
 30 June 30, 1995.
- 31 (2) The addition of sections 23.1 and 46 (repealed) of this
 32 chapter applies to a rulemaking action that commences after
 33 June 30, 1995.

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

38 SECTION 5. IC 4-22-2-13, AS AMENDED BY P.L.2-2007,
 39 SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2023]: Sec. 13. (a) Subject to subsections (b), (c), and (d), this
 41 chapter applies to the addition, amendment, or repeal of a rule in every
 42 rulemaking action.

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

- 44 (1) Any military officer or board.
- 45 (2) Any state educational institution.

46 (c) This chapter does not apply to a rulemaking action that results
 47 in any of the following rules:

- 48 (1) A resolution or directive of any agency that relates solely to
 49 internal policy, internal agency organization, or internal

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procedure and does not have the effect of law.

(2) A restriction or traffic control determination of a purely local nature that:

(A) is ordered by the commissioner of the Indiana department of transportation;

(B) is adopted under IC 9-20-1-3(d), IC 9-21-4-7, or IC 9-20-7; and

(C) applies only to one (1) or more particularly described intersections, highway portions, bridge causeways, or viaduct areas.

(3) A rule adopted by the secretary of state under IC 26-1-9.1-526.

(4) An executive order or proclamation issued by the governor.

(5) A rule adopted by the board of trustees of the Indiana public retirement system, as provided in IC 5-10.5-4-2. However, the board shall submit rules adopted by the board to the publisher for publication in the Indiana Register.

(d) Except as specifically set forth in IC 13-14-9, IC 13-14-9 provides alternative procedures for notice and public comment concerning proposed rules for the environmental rules board and the underground storage tank financial assurance board. The department of environmental management, the environmental rules board, and the underground storage tank financial assurance board shall comply with the procedures in IC 13-14-9 in lieu of complying with sections 23, 24, 26, 27, and 29 of this chapter. ~~do not apply to rulemaking actions under IC 13-14-9. In adopting rules, all other provisions of IC 4-22-2 apply to these agencies, including sections 22.7 and 22.8 of this chapter.~~

SECTION 6. IC 4-22-2-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 15. Any rulemaking action that this chapter allows or requires an agency to perform, other than final adoption of a rule under section 29, ~~or 37.1, 37.2, or 37.3~~ of this chapter ~~or IC 13-14-9~~, may be performed by the individual or group of individuals with the statutory authority to adopt rules for the agency, a member of the agency's staff, or another agent of the agency. Final adoption of a rule under section 29, ~~or 37.1, 37.2, or 37.3~~ of this chapter ~~or IC 13-14-9~~, including readoption of a rule that is subject to sections 24 through 36 or to section 37.1 of this chapter and recalled for further consideration under section 40 of this chapter, may be performed only by the individual or group of individuals with the statutory authority to adopt rules for the agency.

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

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

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1 SECTION 8. IC 4-22-2-17.5 IS ADDED TO THE INDIANA
2 CODE AS A NEW SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2023]: **Sec. 17.5. (a) The legislative services
4 agency shall provide electronic summaries or electronic copies of
5 documents submitted to the publisher under this article or
6 IC 13-14-9 to legislators and legislative committees in the manner
7 and on the schedule specified by the legislative council or the
8 personnel subcommittee of the legislative council acting for the
9 legislative council.**

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

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

- 23 (1) Minimize the expenses to:
 - 24 (A) regulated entities that are required to comply with the
25 rule;
 - 26 (B) persons who pay taxes or pay fees for government
27 services affected by the rule; and
 - 28 (C) consumers of products and services of regulated entities
29 affected by the rule.
- 30 (2) Achieve the regulatory goal in the least restrictive manner.
- 31 (3) Avoid duplicating standards found in state or federal laws.
- 32 (4) Be written for ease of comprehension.
- 33 (5) Have practicable enforcement.

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

36 SECTION 10. IC 4-22-2-21, AS AMENDED BY P.L.204-2016,
37 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
38 JULY 1, 2023]: **Sec. 21. (a) If incorporation of the text in full would be
39 cumbersome, expensive, or otherwise inexpedient, an agency may
40 incorporate by reference into a rule part or all of any of the following
41 matters:**

- 42 (1) A federal or state statute, rule, or regulation.
- 43 (2) A code, manual, or other standard adopted by an agent of the
44 United States, a state, or a nationally recognized organization or
45 association.
- 46 (3) A manual of the department of local government finance
47 adopted in a rule described in IC 6-1.1-31-9.
- 48 (4) The following requirements:
 - 49 (A) The schedule, electronic formatting, and standard data,

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1 field, and record coding requirements for:

2 (i) the electronic data file under IC 6-1.1-4-25
3 concerning the parcel characteristics and parcel
4 assessments of all parcels and personal property return
5 characteristics and assessments; and

6 (ii) the electronic data file under IC 36-2-9-20
7 concerning the tax duplicate.

8 (B) The schedule, electronic formatting, and standard data,
9 field, and record coding requirements for data required to
10 be submitted under IC 6-1.1-5.5-3 or IC 6-1.1-11-8.

11 (C) Data export and transmission format requirements for
12 information described in clauses (A) and (B).

13 (b) Each matter incorporated by reference under subsection (a)
14 must be fully and exactly described.

15 (c) An agency may refer to a matter that is directly or indirectly
16 referred to in a primary matter by fully and exactly describing the
17 primary matter.

18 (d) **Except as otherwise provided in this article**, whenever an
19 agency submits a rule to the attorney general, the governor, or the
20 publisher under this chapter, the agency shall also submit a copy of the
21 full text of each matter incorporated by reference under subsection (a)
22 into the rule, other than the following:

23 (1) An Indiana statute or rule.

24 (2) A form or instructions for a form numbered by the Indiana
25 archives and record administration under IC 5-15-5.1-6.

26 (3) The source of a statement that is quoted or paraphrased in
27 full in the rule.

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

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

30 (B) publisher after June 30, 2006.

31 (5) Any matter referred to in subsection (c) as a matter that is
32 directly or indirectly referred to in a primary matter.

33 (e) An agency may comply with subsection (d) by submitting a
34 paper or an electronic copy of the full text of the matter incorporated
35 by reference.

36 SECTION 11. IC 4-22-2-22.5, AS AMENDED BY P.L.72-2014,
37 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
38 JULY 1, 2023]: Sec. 22.5. (a) This section applies to a rule that an
39 agency intends to:

40 (1) adopt under sections 24 through 36 of this chapter **or section**
41 **37.2 or 37.3 of this chapter; and**

42 (2) **readopt under IC 4-22-2.6.**

43 (b) As used in this section, "pending rulemaking action" means
44 any rulemaking action in which:

45 (1) either:

46 (A) a notice of ~~intent~~ **a public comment period** has been
47 published under section 23, **37.2, or 37.3** of this chapter; **or**

48 (B) a rulemaking action has been commenced under
49 IC 13-14-9; **and or**

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- 1 **(C) a rulemaking action has been commenced under**
 2 **IC 4-22-2.6; and**
 3 (2) the rule has not become effective under section 36 of this
 4 chapter.
 5 (c) Each agency shall maintain a current rulemaking docket that
 6 is indexed.
 7 (d) A current rulemaking docket must list each pending
 8 rulemaking action. The docket must state or contain:
 9 (1) the subject matter of the proposed rule;
 10 (2) notices related to the proposed rule, or links to the Indiana
 11 Register where these notices may be viewed;
 12 (3) how comments may be made;
 13 (4) the time within which comments may be made;
 14 (5) where comments and the agency's written response to those
 15 comments may be inspected;
 16 (6) the date, time, and place where a public hearing required
 17 under:
 18 (A) section 26 of this chapter; or
 19 (B) IC 13-14-9;
 20 will be held;
 21 (7) a description of relevant scientific and technical findings
 22 related to the proposed rule, if applicable; and
 23 (8) a reasonable estimate of the timetable for action, updated
 24 periodically as circumstances change, if necessary.
 25 (e) The agency shall maintain the rulemaking docket on the
 26 agency's ~~Internet web site.~~ **website.** The information must be in an
 27 open format that can be easily searched and downloaded. Access to the
 28 docket shall, to the extent feasible and permitted by law, provide an
 29 opportunity for public comment on the pertinent parts of the
 30 rulemaking docket, including relevant scientific and technical findings.
 31 Upon request, the agency shall provide a written rulemaking docket.
 32 SECTION 12. IC 4-22-2-22.7 IS ADDED TO THE INDIANA
 33 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 34 **[EFFECTIVE JULY 1, 2023]: Sec. 22.7. (a) Before complying with**
 35 **section 22.8 of this chapter, an agency shall conduct a regulatory**
 36 **analysis for the proposed rule. The regulatory analysis must**
 37 **evaluate whether the proposed rule does the following:**
 38 **(1) Minimizes expenses to:**
 39 **(A) regulated entities that are required to comply with**
 40 **the rule;**
 41 **(B) persons who pay taxes or pay fees for government**
 42 **services affected by the rule; and**
 43 **(C) consumers of products and services of regulated**
 44 **entities affected by the rule.**
 45 **(2) Achieves the regulatory goal in the least restrictive**
 46 **manner.**
 47 **(3) Has benefits that exceed the fiscal and economic costs of**
 48 **the proposed rule.**
 49 **(4) Avoids duplicating and conflicting standards with other**

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1 federal, state, or local laws, rules, regulations, or ordinances.

2 (5) Is written for ease of comprehension.

3 (6) Has practicable enforcement.

4 (b) The office of management and budget shall set standards
5 for the criteria, analytical method, treatment technology,
6 economic, fiscal, and other background data to be used by an
7 agency in the regulatory analysis. The regulatory analysis must be
8 submitted in a form that can be easily loaded into commonly used
9 business analysis software and published in the Indiana Register
10 using the format jointly developed by the publisher, the office of
11 management and budget, and the budget agency. The office of
12 management and budget may provide more stringent requirements
13 for rules with fiscal impacts and costs above a threshold amount
14 determined by the office of management and budget. At a
15 minimum, the regulatory analysis must include findings and any
16 supporting data, studies, or analyses prepared for a rule that
17 demonstrate compliance with the following:

18 (1) A requirement in IC 4-3-22-13 explaining how the
19 proposed rule meets the cost benefit requirements in
20 IC 4-3-22-13.

21 (2) A requirement in section 19.5 of this chapter to minimize
22 the expenses to regulated entities that are required to comply
23 with the rule.

24 (3) A statement justifying any requirement or cost that is:

25 (A) imposed on a regulated entity under the rule; and

26 (B) not expressly required by:

27 (i) the statute authorizing the agency to adopt the
28 rule; or

29 (ii) any other state or federal law.

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

34 (4) A requirement in IC 4-22-2.1-5 to prepare a statement
35 that describes the annual economic impact of a rule on all
36 small businesses after the rule is fully implemented.

37 (5) A requirement in IC 4-22-2.6 to conduct a review to
38 consider whether there are any alternative methods of
39 achieving the purpose of the rule that are less costly or less
40 intrusive, or that would otherwise minimize the economic
41 impact of the proposed rule on small businesses.

42 (6) A requirement in IC 13-14-9-3 or IC 13-14-9-4 to publish
43 information concerning the fiscal or economic impact of a
44 rule or alternatives to a rule subject to these provisions.

45 (7) A requirement in IC 13-14-9-3 or IC 13-14-9-4 to publish
46 information concerning differences between the rule and
47 federal law or the annual fiscal and economic impact of any
48 element of the proposed rule that imposes a restriction or
49 requirement that is more stringent than a restriction or
50 requirement imposed under federal law or that applies in a

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1 subject area in which federal law does not impose
2 restrictions or requirements.

3 (8) A requirement under any other law to conduct an
4 analysis of the cost, benefits, economic impact, or fiscal
5 impact of a rule.

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

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

19 (1) A general description of the subject matter of the
20 proposed rule.

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

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

28 (4) Any other information required by the office of
29 management and budget.

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

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

38 (2) Authorize the commencement of the first and second
39 public comment periods on one (1) or more of the rules in the
40 request with or without changes.

41 (3) Disapprove commencement of the first and second public
42 comment periods on one (1) or more of the rules with a
43 statement of reasons for the disapproval.

44 (c) If an agency has requested authorization for more than one
45 (1) rule in the same request, the budget agency and the office of
46 management and budget may make separate determinations with
47 respect to some or all of the rules in the request. Approval of a
48 request shall be treated as a determination that the review
49 conducted and findings made by the agency comply with the

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1 requirements of section 22.7 of this chapter and this section.

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

7 (e) If an agency revises a proposed rule after the budget
8 agency and the office of management and budget authorize
9 commencement of the first and second public comment periods, the
10 agency shall resubmit to the publisher, the budget agency, and the
11 office of management and budget a revised regulatory analysis
12 with sufficient information for the budget agency and the office of
13 management and budget to determine the impact the revisions
14 have on the regulatory analysis previously reviewed by the budget
15 agency and the office of management and budget.

16 SECTION 14. IC 4-22-2-23, AS AMENDED BY P.L.152-2012,
17 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 JULY 1, 2023]: Sec. 23. (a) This section does not apply to rules
19 adopted under IC 4-22-2-37.1. An agency may not adopt a proposed
20 rule until the agency has conducted at least two (2) public comment
21 periods, each of which must be at least thirty (30) days in length.

22 (b) At least twenty-eight (28) days before an agency notifies the
23 public of the agency's intention to adopt a rule under section 24 of this
24 chapter, the agency shall notify the public of its intention to adopt a
25 rule by publishing a notice of intent to adopt a rule in the Indiana
26 Register. An agency shall provide notice in the Indiana Register of
27 the first public comment period required by subsection (a). To
28 publish notice of the first comment period in the Indiana Register,
29 the agency must submit the following to the publisher:

30 (1) The full text of the agency's proposed rule (excluding the
31 full text of a matter incorporated by reference under section
32 21 of this chapter). The agency shall submit the rule in the
33 form required by section 20 of this chapter and with the
34 documents required by section 21 of this chapter.

35 (2) The latest version of the regulatory analysis submitted to
36 the budget agency and the office of management and budget
37 under section 22.8 of this chapter.

38 (3) The determination of the budget agency and the office of
39 management and budget authorizing commencement of the
40 first and second public comment periods on the proposed
41 rule.

42 (4) The notice required under subsection (c).

43 (c) The publication notice of the first comment period must
44 include the following:

45 (1) A general description of the subject matter of the
46 proposed rule.

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

49 (3) The latest version of the regulatory analysis submitted to

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the budget agency and the office of management and budget under section 22.8 of this chapter, excluding any appendices containing any data, studies, or analysis referenced in the regulatory analysis.

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

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

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

(7) An indication that the notice is for the first of two (2) thirty (30) day periods in which the public may comment on the proposed rule.

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

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

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

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

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

(1) The notice of the first comment period.

(2) 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).

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1 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2023]: Sec. 23.1. (a) This section and section 19(b) of this
3 chapter do not apply to rules adopted under IC 4-22-2-37.1.

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

14 SECTION 16. IC 4-22-2-24, AS AMENDED BY P.L.1-2006,
15 SECTION 71, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
16 JULY 1, 2023]: Sec. 24. (a) An agency shall ~~notify the public of its~~
17 ~~intention to adopt a rule by complying with the publication~~
18 ~~requirements in subsections (b) and (c):~~ **provide notice in:**

- 19 (1) **one (1) newspaper of general circulation in Marion**
20 **County; and**
- 21 (2) **the Indiana Register;**
- 22 **of the second public comment period required by section 23 of this**
23 **chapter.**

24 (b) ~~The agency shall cause a notice of a public hearing to be~~
25 ~~published once in one (1) newspaper of general circulation in Marion~~
26 ~~County, Indiana.~~ To publish the newspaper notice, the agency shall
27 directly contract with the newspaper. **The newspaper notice must**
28 **contain the following information:**

- 29 (1) **A general description of the subject matter of the**
30 **proposed rule.**
- 31 (2) **Information indicating that the text of the proposed rule**
32 **has been published in the Indiana Register and where on the**
33 **Internet and by what document control number the**
34 **proposed rule can be found.**
- 35 (3) **A statement of the date, time, and place at which the**
36 **public hearing required by section 26 of this chapter will be**
37 **convened.**
- 38 (4) **Information concerning where, when, and how a person**
39 **may provide written comments on the proposed rule,**
40 **including contact information concerning the small business**
41 **regulatory coordinator required by section 28.1 of this**
42 **chapter.**
- 43 (5) **Information concerning where, when, and how a person**
44 **may inspect and copy the agency's regulatory analysis, and**
45 **any supporting data, studies, or analyses for the proposed**
46 **rule.**
- 47 (6) **Information concerning where, when, and how a person**
48 **may inspect any documents incorporated by reference into**
49 **the proposed rule under section 21 of this chapter.**

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1 An agency may not contract for the publication of a notice under this
2 chapter until the agency has received a written or an electronic
3 authorization to proceed from the publisher under subsection (g): (f).

4 (c) **To publish a notice of the second comment period in the**
5 **Indiana Register, the agency must submit the following to the**
6 **publisher:**

7 (1) ~~The agency shall cause a notice of public hearing and The~~
8 ~~full text of the agency's proposed rule (excluding the full text of~~
9 ~~a matter incorporated by reference under section 21 of this~~
10 ~~chapter). [] to be published once in the Indiana Register. To~~
11 ~~publish the notice and proposed rule in the Indiana Register, the~~
12 ~~agency shall submit the text to the publisher in accordance with~~
13 ~~subsection (g): The agency shall submit the rule in the form~~
14 ~~required by section 20 of this chapter and with the documents~~
15 ~~required by section 21 of this chapter (if the agency has not~~
16 ~~previously provided the publisher with the documents). The~~
17 ~~publisher shall determine the number of copies of the rule and~~
18 ~~other documents to be submitted under this subsection:~~
19 ~~subdivision.~~

20 (2) **Either a statement indicating that no changes in the**
21 **regulatory analysis have been made from the version of the**
22 **regulatory analysis published under section 23 of this**
23 **chapter or the latest version of the regulatory analysis**
24 **submitted to the budget agency and the office of**
25 **management and budget under section 22.8 of this chapter,**
26 **if any changes have been made in the regulatory analysis**
27 **after submitting the material under section 23 of this**
28 **chapter.**

29 (3) **The notice required under subsection (d).**

30 (d) **The agency shall include the following in the second comment**
31 **period notice required by subsections (b) and (c): published in the**
32 **Indiana Register:**

33 (1) A statement of the date, time, and place at which the public
34 hearing required by section 26 of this chapter will be convened.

35 (2) A general description of the subject matter of the proposed
36 rule.

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

39 (A) imposed on a regulated entity under the rule; and

40 (B) not expressly required by:

41 (i) the statute authorizing the agency to adopt the rule;

42 or

43 (ii) any other state or federal law.

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

48 (4) an explanation that:

49 (A) the proposed rule; and

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(B) any data, studies, or analysis referenced in a statement under subdivision (3);

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

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

(4) Either a statement indicating that no changes in the regulatory analysis have been made from the version of the regulatory analysis published under section 23 of this chapter or the latest version of the regulatory analysis (excluding any appendices containing any data, studies, or analysis referenced in the regulatory analysis) submitted to the budget agency and the office of management and budget under section 22.8 of this chapter, if any changes have been made in the regulatory analysis after submitting the material to the publisher under section 23 of this chapter.

(5) An explanation of any differences between the text of the proposed rule published for the first comment period under section 23 of this chapter and the text of the proposed rule published for the second comment period under this section.

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

(7) Information concerning where, when, and how a person may inspect and copy the regulatory analysis and any data, studies, or analyses referenced in a regulatory analysis referenced in subdivision (4).

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

(9) An indication that the notice is for the second of two (2) thirty (30) day periods in which the public may comment on the proposed rule and that following the second comment period the agency may adopt a version of the proposed rule that is the same as or does not substantially differ from the text of the proposed rule published under this section.

However, inadequacy or insufficiency of the subject matter description under subdivision (2) or a statement of justification under subdivision (3) or regulatory analysis in a notice published under this section does not invalidate a rulemaking action.

(e) Although the agency may comply with the publication requirements in this section on different days, the agency must comply with all of the publication requirements in this section at least ~~twenty-one (21)~~ **thirty (30)** days before the public hearing required by section 26 of this chapter is convened.

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1 ~~(f)~~ This section does not apply to the solicitation of comments
2 under section 23 of this chapter.

3 ~~(g)~~ **(f)** The publisher shall review materials submitted under this
4 section and determine the date that the publisher intends to include the
5 material in the Indiana Register. ~~After:~~

6 ~~(1)~~ establishing the intended publication date; and

7 ~~(2)~~ receiving the public hearing information specified in
8 subsection ~~(d)~~ from the agency;

9 the publisher shall **If the submitted material complies with this**
10 **section, the publisher shall establish the intended publication date,**
11 **assign a document control number to the proposed rule, and**
12 provide a written or an electronic mail authorization to proceed to the
13 agency. **The publisher shall publish the following in the Indiana**
14 **Register on the intended publication date:**

15 **(1) The notice of the second comment period.**

16 **(2) The full text of the agency's proposed rule (excluding the**
17 **full text of a matter incorporated by reference under section**
18 **21 of this chapter).**

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

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

36 (2) the expected date the rule will be approved or deemed
37 approved by the governor or withdrawn under section 41 of this
38 chapter.

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

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

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

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

48 SECTION 18. IC 4-22-2-27 IS AMENDED TO READ AS
49 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 27. The individual or

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1 group of individuals who will finally adopt the rule under section 29 of
2 this chapter shall fully consider **written** comments received by the
3 **agency during each comment period and comments received** at the
4 public hearing required by section 26 of this chapter and may consider
5 any other information before adopting the rule. Attendance at the
6 public hearing or review of a written record or summary of the public
7 hearing is sufficient to constitute full consideration.

8 SECTION 19. IC 4-22-2-27.5 IS ADDED TO THE INDIANA
9 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
10 **[EFFECTIVE JULY 1, 2023]: Sec. 27.5. In addition to the**
11 **information submitted to the attorney general under section 31 of**
12 **this chapter, to the governor under section 33 of this chapter, and**
13 **to the publisher under section 35 of this chapter, an agency shall**
14 **submit to the attorney general, the governor, and the publisher a**
15 **summary of the comments received by the agency during each**
16 **comment period and public hearing under sections 23, 24, and 26**
17 **of this chapter or IC 13-14-9 and a summary of the response of the**
18 **agency to the comments. The publisher shall publish the**
19 **summaries with the final adopted and approved rule.**

20 SECTION 20. IC 4-22-2-28, AS AMENDED BY P.L.237-2017,
21 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
22 JULY 1, 2023]: Sec. 28. (a) The following definitions apply throughout
23 this section:

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

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

29 (b) The ombudsman:

30 (1) shall review a proposed rule that

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

33 ~~(B)~~ is referred to the ombudsman by an agency under
34 IC 4-22-2.1-5(c); and

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

38 After conducting a review under subdivision (1) or (2), the ombudsman
39 may suggest alternatives to reduce any regulatory burden that the
40 proposed rule imposes on small businesses or other businesses. The
41 agency that intends to adopt the proposed rule shall respond in writing
42 to the ombudsman concerning the ombudsman's comments or
43 suggested alternatives before adopting the proposed rule under section
44 29 of this chapter.

45 ~~(c)~~ Subject to subsection (e) and not later than fifty (50) days
46 before the public hearing for a proposed rule required by section 26 of
47 this chapter, an agency shall submit the proposed rule to the office of
48 management and budget for a review under subsection (d); if the
49 agency proposing the rule determines that the rule will have a total

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1 estimated economic impact greater than five hundred thousand dollars
2 (\$500,000) on all regulated persons. In determining the total estimated
3 economic impact under this subsection, the agency shall consider any
4 applicable information submitted by the regulated persons affected by
5 the rule. To assist the office of management and budget in preparing
6 the fiscal impact statement required by subsection (d), the agency shall
7 submit, along with the proposed rule, the data used and assumptions
8 made by the agency in determining the total estimated economic
9 impact of the rule.

10 (d) Except as provided in subsection (c), before the adoption of the
11 rule, and not more than forty-five (45) days after receiving a proposed
12 rule under subsection (c), the office of management and budget shall
13 prepare, using the data and assumptions provided by the agency
14 proposing the rule, along with any other data or information available
15 to the office of management and budget, a fiscal impact statement
16 concerning the effect that compliance with the proposed rule will have
17 on:

18 (1) the state; and

19 (2) all persons regulated by the proposed rule.

20 The fiscal impact statement must contain the total estimated economic
21 impact of the proposed rule and a determination concerning the extent
22 to which the proposed rule creates an unfunded mandate on a state
23 agency or political subdivision. The fiscal impact statement is a public
24 document. The office of management and budget shall make the fiscal
25 impact statement available to interested parties upon request and to the
26 agency proposing the rule. The agency proposing the rule shall
27 consider the fiscal impact statement as part of the rulemaking process
28 and shall provide the office of management and budget with the
29 information necessary to prepare the fiscal impact statement, including
30 any economic impact statement prepared by the agency under
31 IC 4-22-2.1-5. The office of management and budget may also receive
32 and consider applicable information from the regulated persons
33 affected by the rule in preparation of the fiscal impact statement.

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

35 (1) the department of environmental management shall give
36 written notice to the office of management and budget of the
37 proposed date of preliminary adoption of the proposed rule not
38 less than sixty-six (66) days before that date; and

39 (2) the office of management and budget shall prepare the fiscal
40 impact statement referred to in subsection (d) not later than
41 twenty-one (21) days before the proposed date of preliminary
42 adoption of the proposed rule.

43 (f) In determining whether a proposed rule has a total estimated
44 economic impact greater than five hundred thousand dollars
45 (\$500,000), the agency proposing the rule shall consider the impact of
46 the rule on any regulated person that already complies with the
47 standards imposed by the rule on a voluntary basis.

48 (g) For purposes of this section, a rule is fully implemented after:

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

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- 1 (A) the rule is gradually made to apply to certain regulated
- 2 persons; or
- 3 (B) the costs of the rule are gradually implemented; and
- 4 (2) the rule applies to all regulated persons that will be affected
- 5 by the rule.

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

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

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

- 33 (1) a requirement in section 19.5 of this chapter to minimize the
- 34 expenses to regulated entities that are required to comply with
- 35 the rule;
- 36 (2) a requirement in section 24 of this chapter to publish a
- 37 justification of any requirement or cost that is imposed on a
- 38 regulated entity under the rule;
- 39 (3) a requirement in IC 4-22-2.1-5 to prepare a statement that
- 40 describes the annual economic impact of a rule on all small
- 41 businesses after the rule is fully implemented;
- 42 (4) a requirement in IC 4-22-2.5-3.1 to conduct a review to
- 43 consider whether there are any alternative methods of achieving
- 44 the purpose of the rule that are less costly or less intrusive; or
- 45 that would otherwise minimize the economic impact of the
- 46 proposed rule on small businesses;
- 47 (5) a requirement in IC 13-14-9-3 or IC 13-14-9-4 to publish
- 48 information concerning the fiscal impact of a rule or alternatives
- 49 to a rule subject to these provisions; or

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1 (6) a requirement under any other law to conduct an analysis of
2 the cost, economic impact, or fiscal impact of a rule;
3 regardless of whether the total estimated economic impact of the
4 proposed rule is more than five hundred thousand dollars (\$500,000);
5 as soon as practicable after the information is prepared. Information
6 submitted under this subsection must identify the rule to which the
7 information is related by document control number assigned by the
8 publisher.

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

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

15 (2) A rule for which:

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

17 (B) an appropriate later notice for circumstances described
18 in subsection (g);

19 is published by the department of environmental management
20 after June 30, 2006.

21 (b) As used in this section, "coordinator" refers to the small
22 business regulatory coordinator assigned to a rule by an agency under
23 subsection (e).

24 (c) As used in this section, "director" refers to the director or other
25 administrative head of an agency.

26 (d) As used in this section, "small business" has the meaning set
27 forth in IC 5-28-2-6.

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

38 (1) in the case of a proposed rule, the notice of ~~intent to adopt~~
39 ~~the rule~~ **the first public comment period** published under
40 section 23 of this chapter; or

41 (2) in the case of a rule proposed by the department of
42 environmental management or the board (as defined in
43 IC 13-13-8-1), the notice published under IC 13-14-9-3 or the
44 findings published under IC 13-14-9-8(b)(1), whichever applies;
45 must include the name, address, telephone number, and electronic mail
46 address of the small business coordinator for the proposed rule, the
47 name, address, telephone number, and electronic mail address of the
48 small business ombudsman designated under IC 5-28-17-6, and a
49 statement of the resources available to regulated entities through the

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1 small business ombudsman designated under IC 5-28-17-6. Subject to
2 subsection (f), in the case of a rule finally adopted, the final rule, as
3 published in the Indiana Register, must include the name, address,
4 telephone number, and electronic mail address of the coordinator.

5 (f) This subsection applies to a rule adopted by the department of
6 environmental management or the board (as defined in IC 13-13-8-1)
7 under IC 13-14-9. Subject to subsection (g), the department shall
8 include in the notice provided under IC 13-14-9-3 or in the findings
9 published under IC 13-14-9-8(b)(1), whichever applies, and in the
10 publication of the final rule in the Indiana Register:

11 (1) a statement of the resources available to regulated entities
12 through the technical and compliance assistance program
13 established under IC 13-28-3;

14 (2) the name, address, telephone number, and electronic mail
15 address of the ombudsman designated under IC 13-28-3-2;

16 (3) if applicable, a statement of:

17 (A) the resources available to small businesses through the
18 small business stationary source technical assistance
19 program established under IC 13-28-5; and

20 (B) the name, address, telephone number, and electronic
21 mail address of the ombudsman for small business
22 designated under IC 13-28-5-2(3); and

23 (4) the information required by subsection (e).

24 The coordinator assigned to the rule under subsection (e) shall work
25 with the ombudsman described in subdivision (2) and the office of
26 voluntary compliance established by IC 13-28-1-1 to coordinate the
27 provision of services required under subsection (h) and IC 13-28-3. If
28 applicable, the coordinator assigned to the rule under subsection (e)
29 shall work with the ombudsman referred to in subdivision (3)(B) to
30 coordinate the provision of services required under subsection (h) and
31 IC 13-28-5.

32 (g) If the notice provided under IC 13-14-9-3 is not published as
33 allowed by IC 13-14-9-7, the department of environmental
34 management shall publish in the notice provided under IC 13-14-9-4
35 the information that subsection (f) would otherwise require to be
36 published in the notice under IC 13-14-9-3. If neither the notice under
37 IC 13-14-9-3 nor the notice under IC 13-14-9-4 is published as allowed
38 by IC 13-14-9-8, the department of environmental management shall
39 publish in the commissioner's written findings under IC 13-14-9-8(b)
40 the information that subsection (f) would otherwise require to be
41 published in the notice under IC 13-14-9-3.

42 (h) The coordinator assigned to a rule under subsection (e) shall
43 serve as a liaison between the agency and any small business subject
44 to regulation under the rule. The coordinator shall provide guidance to
45 small businesses affected by the rule on the following:

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

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

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- 1 (3) Any penalties, sanctions, or fines imposed for noncompliance
- 2 with the rule.
- 3 (4) Any other concerns of small businesses with respect to the
- 4 rule, including the agency's application or enforcement of the
- 5 rule in particular situations. However, in the case of a rule
- 6 adopted under IC 13-14-9, the coordinator assigned to the rule
- 7 may refer a small business with concerns about the application
- 8 or enforcement of the rule in a particular situation to the
- 9 ombudsman designated under IC 13-28-3-2 or, if applicable,
- 10 under IC 13-28-5-2(3).
- 11 (i) The coordinator assigned to a rule under subsection (e) shall
- 12 provide guidance under this section in response to questions and
- 13 concerns expressed by small businesses affected by the rule. The
- 14 coordinator may also issue general guidelines or informational
- 15 pamphlets to assist small businesses in complying with the rule. Any
- 16 guidelines or informational pamphlets issued under this subsection
- 17 shall be made available:
- 18 (1) for public inspection and copying at the offices of the agency
- 19 under IC 5-14-3; and
- 20 (2) electronically through electronic gateway access.
- 21 (j) The coordinator assigned to a rule under subsection (e) shall
- 22 keep a record of all comments, questions, and complaints received
- 23 from small businesses with respect to the rule. The coordinator shall
- 24 deliver the record, along with any accompanying documents submitted
- 25 by small businesses, to the director:
- 26 (1) not later than ten (10) days after the date on which the rule is
- 27 submitted to the publisher under section 35 of this chapter; and
- 28 (2) before July 15 of each year during which the rule remains in
- 29 effect.
- 30 The coordinator and the director shall keep confidential any
- 31 information concerning a small business to the extent that the
- 32 information is exempt from public disclosure under IC 5-14-3-4.
- 33 (k) Not later than November 1 of each year, the director shall:
- 34 (1) compile the records received from all of the agency's
- 35 coordinators under subsection (j);
- 36 (2) prepare a report that sets forth:
- 37 (A) the number of comments, complaints, and questions
- 38 received by the agency from small businesses during the
- 39 most recent state fiscal year, categorized by the subject
- 40 matter of the rules involved;
- 41 (B) the number of complaints or questions reported under
- 42 clause (A) that were resolved to the satisfaction of the
- 43 agency and the small businesses involved;
- 44 (C) the total number of staff serving as coordinators under
- 45 this section during the most recent state fiscal year;
- 46 (D) the agency's costs in complying with this section during
- 47 the most recent state fiscal year; and
- 48 (E) the projected budget required by the agency to comply
- 49 with this section during the current state fiscal year; and

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1 (3) deliver the report to the legislative council in an electronic
2 format under IC 5-14-6 and to the small business ombudsman
3 designated under IC 5-28-17-6.

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

9 (b) After an agency has complied with sections ~~26, 27, and 22.8~~
10 **through 28** of this chapter, the agency may:

11 (1) adopt a rule that is identical to a proposed rule published in
12 the Indiana Register under section 24 of this chapter;

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

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

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

25 (c) An agency may not adopt a rule that substantially differs from
26 the version or versions of the proposed rule or rules published in the
27 Indiana Register under section 24 of this chapter, unless it is a logical
28 outgrowth of any proposed rule as supported by any written comments
29 submitted:

30 (1) during the public comment ~~period;~~ **periods;** or

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

33 SECTION 23. IC 4-22-2-31, AS AMENDED BY P.L.123-2006,
34 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
35 JULY 1, 2023]: Sec. 31. After an agency has complied with section 29
36 of this chapter, or with IC 13-14-9-9(1) or IC 13-14-9-9(2), as
37 applicable, the agency shall submit its rule to the attorney general for
38 approval. The agency shall submit the following to the attorney
39 general:

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

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

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

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

45 The attorney general may require the agency to submit any supporting
46 documentation that the attorney general considers necessary for the
47 attorney general's review under section 32 of this chapter. The agency
48 may submit any additional supporting documentation the agency
49 considers necessary.

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1 SECTION 24. IC 4-22-2-37.1, AS AMENDED BY P.L.140-2013,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2023]: Sec. 37.1. (a) The following do not apply to a rule
4 adopted under this section:

- 5 (1) Sections ~~24~~ **23** through ~~36~~ **27** of this chapter
- 6 ~~(2) or~~ **IC 13-14-9 (as applicable).**
- 7 **(2) Sections 28 through 36 of this chapter.**

8 **The amendments to this section made in the 2023 regular session**
9 **of the general assembly apply to emergency rules that are accepted**
10 **for filing by the publisher of the Indiana Register after June 30,**
11 **2023, regardless of whether the adopting agency initiated official**
12 **action to adopt the emergency rule before July 1, 2023. An action**
13 **taken before July 1, 2023, in conformity with this section (as**
14 **effective after June 30, 2023) is validated to the same extent as if**
15 **the action was taken after June 30, 2023.**

16 (b) ~~An agency may adopt a rule may be adopted under on a~~
17 ~~subject for which the agency has rulemaking authority using the~~
18 ~~procedures in this section if a statute delegating authority to an agency~~
19 ~~to adopt rules authorizes adoption of such a rule:~~

- 20 ~~(1) under this section; or~~
- 21 ~~(2) in the manner provided by this section.~~

22 **the governor finds that the agency proposing to adopt the rule has**
23 **demonstrated to the satisfaction of the governor that use of**
24 **emergency rulemaking procedures under this section is necessary**
25 **to avoid:**

- 26 **(1) an imminent and substantial peril to public health, safety,**
27 **or welfare;**
- 28 **(2) an imminent and material loss of federal funds for an**
29 **agency program;**
- 30 **(3) an imminent and material deficit; or**
- 31 **(4) an imminent and substantial violation of a state or federal**
32 **law or the terms of a federal agreement or program.**

33 **To obtain a determination from the governor, an agency must**
34 **submit to the governor the text of the proposed emergency rule, a**
35 **statement justifying the need for emergency rulemaking**
36 **procedures, and any additional information required by the**
37 **governor in the form and in the manner required by the governor.**
38 **A notice of determination by the governor shall include findings**
39 **that explain the basis for the determination. The notice of**
40 **determination shall be provided to the agency in an electronic**
41 **format. Approval of a request shall be treated as a determination**
42 **that the rule meets the criteria in this subsection.**

43 (c) ~~After an agency adopts a rule under this section, the governor~~
44 ~~approves emergency rulemaking procedures for a rule, the agency~~
45 ~~shall submit the rule to the publisher for the assignment of obtain a~~
46 ~~document control number The agency shall submit the rule in the form~~
47 ~~required by section 20 of this chapter and with the documents required~~
48 ~~by section 24 of this chapter. from the publisher. The publisher shall~~
49 ~~determine the documents and the format of the rule and other~~

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1 documents ~~to that must~~ be submitted ~~under this subsection~~ **to the**
 2 **publisher to obtain a document control number.**

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

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

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

12 **(3) The approval of the governor to use emergency**
 13 **rulemaking procedures for the rule.**

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

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

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

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

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

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

29 ~~☆~~ **An emergency 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 the
 32 agency to adopt the **emergency rule**.

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

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

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

40 (5) The statutory effective date for an emergency rule set forth
 41 in ~~the statute authorizing the agency to adopt emergency rules.~~
 42 **law.**

43 (g) Unless otherwise provided by the statute authorizing adoption
 44 of the rule:

45 ~~(1) a rule adopted under this section expires not later than ninety~~
 46 ~~(90) days after the rule is accepted for filing under subsection~~
 47 ~~(e);~~

48 ~~(2) a rule adopted under this section may be extended by~~
 49 ~~adopting another rule under this section; but only for one (1)~~

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1 extension period; and
 2 ~~(3)~~ for a rule adopted under this section to be effective after one
 3 ~~(1)~~ extension period; the rule must be adopted under:
 4 (A) sections 24 through 36 of this chapter; or
 5 (B) IC 13-14-9;
 6 as applicable.

7 **(g) An agency may amend an emergency rule with another**
 8 **emergency rule by following the procedures in this section for the**
 9 **amending emergency rule. However, unless otherwise provided by**
 10 **IC 4-22-2.3, an emergency rule and all amendments of an**
 11 **emergency rule by another emergency rule expire not later than**
 12 **one hundred eighty (180) days after the initial emergency rule is**
 13 **accepted for filing under subsection (e). The subject of the**
 14 **emergency rule, including all amendments to the emergency rule,**
 15 **may not be subsequently extended under this section or section**
 16 **37.2 of this chapter. If the governor determines that the emergency**
 17 **that is the basis for using the procedures under this section ceases**
 18 **to exist, the governor may terminate the emergency rule before the**
 19 **lapse of one hundred eighty (180) days. The termination is effective**
 20 **when filed with the publisher. The publisher shall publish the**
 21 **termination notice in the Indiana Register.**

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

24 ~~(i)~~ The publisher of the Indiana administrative code shall annually
 25 publish a list of agencies authorized to adopt rules under this section.

26 **(h) Subject to subsection (i), the attorney general or the**
 27 **governor may file an objection to an emergency rule that is**
 28 **adopted under this section not later than forty-five (45) days after**
 29 **the date that an emergency rule or amendment to an emergency**
 30 **rule is accepted for filing under subsection (e). The objection must**
 31 **cite the document control number for the affected emergency rule**
 32 **and state the basis for the objection. When filed with the publisher,**
 33 **the objection has the effect of invalidating the emergency rule or**
 34 **amendment to an emergency rule. The publisher shall publish the**
 35 **objection in the Indiana Register.**

36 **(i) The attorney general may file a written objection to an**
 37 **emergency rule under subsection (h) only if the attorney general**
 38 **determines that the emergency rule has been adopted:**
 39 **(1) without statutory authority; or**
 40 **(2) without complying with this section.**

41 **A notice of objection to an emergency rule by the attorney general**
 42 **must include findings that explain the basis for the determination.**
 43 **The notice of objection shall be provided to the agency in an**
 44 **electronic format.**

45 SECTION 25. IC 4-22-2-37.2 IS ADDED TO THE INDIANA
 46 CODE AS A NEW SECTION TO READ AS FOLLOWS
 47 [EFFECTIVE JULY 1, 2023]: **Sec. 37.2. (a) The following do not**
 48 **apply to a rule adopted under this section:**
 49 **(1) Sections 23 through 27 of this chapter or IC 13-14-9 (as**

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applicable).

(2) Sections 28 through 36 of this chapter.

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

(b) An agency may adopt a rule on a subject for which the agency has rulemaking authority with a single comment period of at least thirty (30) days in length using the procedures in this section if the governor finds that the agency proposing to adopt the rule has demonstrated to the satisfaction of the governor that use of interim rulemaking procedures under this section is necessary to implement:

(1) a new state or federal law or program, rule of another state agency, federal regulation, or federal grant or loan agreement, or (if used by the agency to carry out the agency's responsibilities) a building, an equipment, a firefighting, a safety, or a professional code adopted by a nationally recognized organization; or

(2) a change in a new state or federal law or program, rule of another state agency, federal regulation, federal grant or loan agreement, or (if used by the agency to carry out the agency's responsibilities) a building, an equipment, a firefighting, a safety, or a professional code adopted by a nationally recognized organization;

before the time that a final rule approved by the governor under section 34 of this chapter could reasonably take effect. To obtain a determination from the governor, an agency must submit to the governor the text of the proposed interim rule, a statement justifying the need for interim rulemaking procedures, and any additional information required by the governor in the form and in the manner required by the governor. A notice of determination by the governor shall include findings that explain the basis for the determination. The notice of determination shall be provided to the agency in an electronic format. Approval of a request shall be treated as a determination that the rule meets the criteria in this subsection.

(c) An agency shall notify the public of its intention to adopt an interim rule by complying with the publication requirements in this section. The agency shall cause a notice of a public comment period and the full text of the agency's proposed interim 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. The publisher shall review materials submitted under this section and determine the date that the publisher intends to include

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1 the material in the Indiana Register. After establishing the
2 intended publication date and receiving the public comment period
3 information from the agency, the publisher shall provide a written
4 or an electronic mail authorization to proceed to the agency.

5 (d) The agency shall include the following in the notice of the
6 public comment period:

7 (1) A general description of the subject matter of the
8 proposed interim rule, including the document control
9 number.

10 (2) A statement justifying any requirement or cost that is:

11 (A) imposed on a regulated entity under the interim
12 rule; and

13 (B) not expressly required by the statute authorizing the
14 agency to adopt rules or any other state or federal law.

15 The statement required under this subdivision must include
16 a reference to any data, studies, or analyses relied upon by
17 the agency in determining that the imposition of the
18 requirement or cost is necessary and where and how a
19 person may inspect and copy or electronically download the
20 data, studies, or analyses.

21 (3) A date that is thirty (30) days after the notice is published
22 in the Indiana Register by which written comments are due
23 and a statement explaining that any person may submit
24 written comments concerning the proposed expedited rule
25 during the public comment period and instructions on when,
26 where, and how the person may submit written comments.

27 However, inadequacy or insufficiency of the subject matter
28 description under subdivision (1) or a statement of justification
29 under subdivision (2) in a notice does not invalidate a rulemaking
30 action. An agency may continue the comment period by publishing
31 a subsequent notice in the Indiana Register extending the comment
32 period.

33 (e) Before adopting the interim rule, the agency shall prepare
34 a written response to comments received by the agency, including
35 the reasons for rejecting any recommendations made in the
36 comments.

37 (f) After an agency has completed the initial public comment
38 period of at least thirty (30) days in length and complied with
39 subsection (e), the agency may:

40 (1) adopt a rule that is identical to a proposed interim rule
41 published in the Indiana Register under this section; or

42 (2) adopt a revised version of a proposed interim rule
43 published under this section and include provisions that did
44 not appear in the initially published proposed version.

45 An agency may not adopt an interim rule that substantially differs
46 from the version of the proposed interim rule published in the
47 Indiana Register under this section, unless it is a logical outgrowth
48 of any proposed interim rule as supported by any written
49 comments submitted during the public comment period.

50 (g) After the agency adopts the interim rule, the agency shall

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submit the following to the publisher for filing:

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

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

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

(4) The approval of the governor to use interim rulemaking procedures for the rule.

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

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

(h) Subject to subsection (g) and section 39 of this chapter, the publisher shall:

(1) accept the rule for filing;

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

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

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

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

(2) The date and time that the interim rule is accepted for filing under subsection (h).

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

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

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

(j) An agency may amend an interim rule with another interim rule by following the procedures in this section for adoption of an interim rule. An interim rule and all subsequent rules on the same subject adopted under section 37.1 or 37.3 of this chapter or this section expire not later than four hundred twenty-five (425) days after the initial interim rule is accepted for filing under subsection (h). The interim rule, including all subsequent interim rules adopted under section 37.1 or 37.3 of this chapter or this section on the same subject, may not be subsequently extended under section 37.1 or 37.3 of this chapter or this section after four hundred twenty-five (425) days.

(k) Subject to subsection (l), the attorney general or the

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1 governor may file an objection to an interim rule that is adopted
 2 under this section not later than forty-five (45) days after the date
 3 that an interim rule or amendment to an interim rule is accepted
 4 for filing under subsection (h). The objection must cite the
 5 document control number for the affected interim rule and state
 6 the basis for the objection. When filed with the publisher, the
 7 objection has the effect of invalidating the interim rule or
 8 amendment to an interim rule. The publisher shall publish the
 9 objection in the Indiana Register.

10 (l) The attorney general may file a written objection to an
 11 interim rule under subsection (k) only if the attorney general
 12 determines that the interim rule has been adopted:

- 13 (1) without statutory authority; or
- 14 (2) without complying with this section.

15 A notice of objection to an interim rule by the attorney general
 16 must include findings that explain the basis for the determination.
 17 The notice of objection shall be provided to the agency in an
 18 electronic format.

19 SECTION 26. IC 4-22-2-37.3 IS ADDED TO THE INDIANA
 20 CODE AS A NEW SECTION TO READ AS FOLLOWS
 21 [EFFECTIVE JULY 1, 2023]: Sec. 37.3. (a) The following do not
 22 apply to a rule adopted under this section:

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

26 (b) An agency may adopt a rule described in IC 4-22-2.3 with
 27 a single comment period of at least thirty (30) days in length using
 28 the procedures in this section if the governor finds that the agency
 29 proposing to adopt the rule has demonstrated to the satisfaction of
 30 the governor that use of expedited rulemaking procedures under
 31 this section is appropriate for a rule described in IC 4-22-2.3. To
 32 obtain a determination from the governor, an agency must submit
 33 to the governor the text of the proposed expedited rule, a statement
 34 justifying the need for expedited rulemaking procedures, and any
 35 additional information required by the governor in the form and
 36 in the manner required by the governor. A notice of determination
 37 by the governor shall include findings that explain the basis for the
 38 determination. The notice of determination shall be provided to the
 39 agency in an electronic format. Approval of a request shall be
 40 treated as a determination that the rule meets the criteria in this
 41 subsection.

42 (c) An agency shall notify the public of its intention to adopt a
 43 rule by complying with the publication requirements in this
 44 section. The agency shall cause a notice of a public comment period
 45 and the full text of the agency's proposed expedited rule (excluding
 46 the full text of a matter incorporated by reference under section 21
 47 of this chapter) to be published once in the Indiana Register. The
 48 publisher shall review materials submitted under this section and
 49 determine the date that the publisher intends to include the

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1 material in the Indiana Register. After establishing the intended
2 publication date and receiving the public comment period
3 information from the agency, the publisher shall provide a written
4 or an electronic mail authorization to proceed to the agency.

5 (d) The agency shall include the following in the notice of the
6 public comment period:

7 (1) A general description of the subject matter of the
8 proposed expedited rule, including the document control
9 number.

10 (2) A statement justifying any requirement or cost that is:

11 (A) imposed on a regulated entity under the expedited
12 rule; and

13 (B) not expressly required by the statute authorizing the
14 agency to adopt rules or any other state or federal law.

15 The statement required under this subdivision must include
16 a reference to any data, studies, or analyses relied upon by
17 the agency in determining that the imposition of the
18 requirement or cost is necessary and where and how a
19 person may inspect and copy or electronically download the
20 data, studies, or analysis.

21 (3) A date that is thirty (30) days after the notice is published
22 in the Indiana Register by which written comments are due
23 and a statement explaining that any person may submit
24 written comments concerning the proposed expedited rule
25 during the public comment period and instructions on when,
26 where, and how the person may submit written comments.

27 However, inadequacy or insufficiency of the subject matter
28 description under subdivision (1) or a statement of justification
29 under subdivision (2) in a notice does not invalidate a rulemaking
30 action. An agency may continue the comment period by publishing
31 a subsequent notice in the Indiana Register extending the comment
32 period.

33 (e) Before adopting the expedited rule, the agency shall
34 prepare a written response to comments received by the agency,
35 including the reasons for rejecting any recommendations made in
36 the comments.

37 (f) After an agency has completed the comment period under
38 this section and complied with subsection (e), the agency may:

39 (1) adopt a rule that is identical to a proposed expedited rule
40 published in the Indiana Register under this section; or

41 (2) adopt a revised version of a proposed expedited rule
42 published under this section and include provisions that did
43 not appear in the published version.

44 An agency may not adopt an expedited rule that substantially
45 differs from the version of the proposed expedited rule published
46 in the Indiana Register under this section, unless it is a logical
47 outgrowth of any proposed expedited rule as supported by any
48 written comments submitted during the public comment period.

49 (g) After the agency adopts the expedited rule, the agency shall
50 submit the following to the publisher for filing:

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- 1 (1) The text of the adopted expedited rule. The agency shall
 2 submit the expedited rule in the form required by section 20
 3 of this chapter.
- 4 (2) A summary of the comments received by the agency
 5 during the comment period and the agency's response to the
 6 comments.
- 7 (3) A signature page that indicates that the agency has
 8 adopted the expedited rule in conformity with all procedures
 9 required by law.
- 10 (4) The approval of the governor to use expedited
 11 rulemaking procedures for the rule.
- 12 (5) The documents required by section 21 of this chapter.
- 13 **The publisher shall determine the format of the expedited rule and**
 14 **other documents to be submitted under this subsection. The**
 15 **substantive text of the adopted expedited rule must be substantially**
 16 **similar to the text of the proposed expedited rule submitted to the**
 17 **governor. An expedited rule may suspend but not repeal a rule**
 18 **approved by the governor under section 34 of this chapter.**
- 19 (h) Subject to subsection (g) and section 39 of this chapter, the
 20 publisher shall:
- 21 (1) accept the expedited rule for filing;
- 22 (2) electronically record the date and time that the expedited
 23 rule is accepted; and
- 24 (3) publish the text of the adopted expedited rule and the
 25 governor's approval in the Indiana Register.
- 26 (i) An expedited rule adopted by an agency under this section
 27 takes effect on the latest of the following dates:
- 28 (1) The effective date of the statute delegating authority to
 29 the agency to adopt the expedited rule.
- 30 (2) The date and time that the expedited rule is accepted for
 31 filing under subsection (h).
- 32 (3) The effective date stated by the adopting agency in the
 33 expedited rule.
- 34 (4) The date of compliance with every requirement
 35 established by law as a prerequisite to the adoption or
 36 effectiveness of the expedited rule.
- 37 (5) The statutory effective date for an expedited rule set forth
 38 in law.
- 39 (j) An expedited rule that has been accepted for filing under
 40 subsection (h) expires as provided in IC 4-22-2.3. An agency may
 41 continue an expedited rule for an additional period after it would
 42 otherwise expire only as permitted in IC 4-22-2.3.
- 43 (k) Subject to subsection (l), the attorney general or the
 44 governor may file an objection to a rule that is adopted under this
 45 section not later than forty-five (45) days after the date and time
 46 that an expedited rule or amendment to an expedited rule is
 47 accepted for filing under subsection (h). The objection must cite the
 48 document control number for the affected expedited rule and state
 49 the basis for the objection. When filed with the publisher, the

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1 objection has the effect of invalidating the expedited rule or
2 amendment to an expedited rule. The publisher shall publish the
3 objection in the Indiana Register.

4 (l) The attorney general may file a written objection to an
5 expedited rule under subsection (k) only if the attorney general
6 determines that the expedited rule has been adopted:

7 (1) without statutory authority; or

8 (2) without complying with this section.

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

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

17 (1) A rule that brings another rule into conformity with section
18 20 of this chapter.

19 (2) A rule that amends another rule to replace an inaccurate
20 reference to a statute, rule, regulation, other text, governmental
21 entity, or location with an accurate reference, when the
22 inaccuracy is the result of the rearrangement of a federal or state
23 statute, rule, or regulation under a different citation number, a
24 federal or state transfer of functions from one (1) governmental
25 entity to another, a change in the name of a federal or state
26 governmental entity, or a change in the address of an entity.

27 (3) A rule correcting any other typographical, clerical, or
28 spelling error in another rule.

29 (b) Sections 24 through ~~37.1~~ 37.3 of this chapter do not apply to
30 rules described in subsection (a).

31 (c) Notwithstanding any other statute, an agency may adopt a rule
32 described by subsection (a) without complying with any statutory
33 notice, hearing, adoption, or approval requirement. In addition, the
34 governor may adopt a rule described in subsection (a) for an agency
35 without the agency's consent or action.

36 (d) A rule described in subsection (a) shall be submitted to the
37 publisher for the assignment of a document control number. The
38 agency (or the governor, for the agency) shall submit the rule in the
39 form required by section 20 of this chapter and with the documents
40 required by section 21 of this chapter. The publisher shall determine
41 the number of copies of the rule and other documents to be submitted
42 under this subsection.

43 (e) After a document control number is assigned, the agency (or
44 the governor, for the agency) shall submit the rule to the publisher for
45 filing. The agency (or the governor, for the agency) shall submit the
46 rule in the form required by section 20 of this chapter and with the
47 documents required by section 21 of this chapter. The publisher shall
48 determine the format of the rule and other documents to be submitted
49 under this subsection.

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- 1 (f) Subject to section 39 of this chapter, the publisher shall:
 2 (1) accept the rule for filing; and
 3 (2) electronically record the date and time that it is accepted.
 4 (g) Subject to subsection (h), a rule described in subsection (a)
 5 takes effect on the latest of the following dates:
 6 (1) The date that the rule being corrected by a rule adopted under
 7 this section becomes effective.
 8 (2) The date that is forty-five (45) days from the date and time
 9 that the rule adopted under this section is accepted for filing
 10 under subsection (f).

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

16 SECTION 28. IC 4-22-2-39, AS AMENDED BY P.L.123-2006,
 17 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2023]: Sec. 39. (a) When an agency submits a rule for filing
 19 under section 35, 37.1, **37.2, 37.3**, or 38 of this chapter, the publisher
 20 may accept the rule for filing only if the following conditions are met:

- 21 (1) The following documents are submitted to allow the
 22 publisher to comply with IC 4-22-7-5:
 23 (A) One (1) electronic copy of the rule.
 24 (B) One (1) copy of any matters incorporated by reference
 25 under section 21 of this chapter in the format specified by
 26 the publisher.
 27 (C) One (1) copy of any supporting documentation
 28 submitted under section 31 of this chapter in the format
 29 specified by the publisher.
 30 (2) Each submitted copy includes a reference to the document
 31 control number assigned to the rule by the publisher.
 32 (3) Each submitted copy indicates that the agency has conducted
 33 its rulemaking action in conformity with all procedures required
 34 by law. However, if section 31 of this chapter applies to the rule,
 35 the publisher shall rely on the approval of the attorney general as
 36 the basis for determining that the agency has complied with all
 37 procedures required before the date of the approval.

38 (b) If a rule includes a statement that the rule is not effective until:
 39 (1) an agency has complied with requirements established by the
 40 federal or state government;
 41 (2) a specific period of time has elapsed; or
 42 (3) a date has occurred;
 43 the agency has complied with subsection (a)(3) even if the described
 44 event or time has not occurred before the publisher reviews the rule
 45 under this section.

46 (c) The publisher shall take no more than three (3) business days
 47 to complete the review of a rule under this section.

48 SECTION 29. IC 4-22-2-40, AS AMENDED BY P.L.53-2014,
 49 SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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1 JULY 1, 2023]: Sec. 40. (a) At any time before a rule is accepted for
2 filing by the publisher under section 35, 37.1, **37.2, 37.3**, or 38 of this
3 chapter, the agency that adopted the rule may recall it. A rule may be
4 recalled regardless of whether:

- 5 (1) the rule has been disapproved by the attorney general under
- 6 section 32 of this chapter; or
- 7 (2) the rule has been disapproved by the governor under section
- 8 34 of this chapter.

9 (b) Sections 24 through 38 of this chapter do not apply to a recall
10 action under this section. However, the agency shall distribute a notice
11 of its recall action to the publisher for publication in the Indiana
12 Register. Sections 24 and 26 of this chapter do not apply to a
13 readoption action under subsection (c).

14 (c) After an agency recalls a rule, the agency may reconsider its
15 adoption action and adopt an identical rule or a revised rule. However,
16 if sections 24 through 36 of this chapter apply to the recalled rule, the
17 readopted rule must comply with the requirements under section 29 of
18 this chapter.

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

21 (e) If a rule is:

- 22 (1) subject to sections 31 and 33 of this chapter;
- 23 (2) recalled under subsection (a); and
- 24 (3) readopted under subsection (c);

25 the agency shall resubmit the readopted version of the recalled rule to
26 the attorney general and the governor for approval. The attorney
27 general and the governor have the full statutory period to approve or
28 disapprove the readopted rule. ~~If the recalled rule was submitted to the~~
29 ~~office of management and budget under section 28 of this chapter,~~ The
30 agency shall resubmit the readopted version of a recalled rule to the
31 office of management and budget with sufficient information for the
32 office of management and budget to evaluate whether ~~its~~ **the initial**
33 **fiscal impact statement regulatory analysis submitted to the office**
34 **of management and budget** under section ~~28~~ **22.8** of this chapter
35 needs to be revised. ~~The office of management and budget shall revise~~
36 ~~a fiscal impact statement under section 28 of this chapter~~ If the fiscal
37 impact of the readopted rule is substantially different from the recalled
38 rule, **the agency shall submit the revised regulatory analysis to the**
39 **publisher for publication in the Indiana Register with the**
40 **document control number assigned by the publisher to the rule.**
41 The agency also shall comply with any other applicable approval
42 requirement provided by statute.

43 (f) The readopted version of a recalled rule is effective only after
44 the agency has complied with section 35, 37.1, **37.2, 37.3**, or 38 of this
45 chapter.

46 SECTION 30. IC 4-22-2-41, AS AMENDED BY P.L.123-2006,
47 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
48 JULY 1, 2023]: Sec. 41. (a) At any time before a rule is accepted by the
49 publisher for filing under section 35, 37.1, **37.2, 37.3**, or 38 of this

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chapter, the agency that adopted the rule may withdraw it.

(b) Sections 24 through 40 of this chapter do not apply to a withdrawal action. However, the withdrawing agency shall distribute a notice of the withdrawal to the publisher for publication in the Indiana Register.

(c) The withdrawal of a rule under this section terminates the rulemaking action, and the withdrawn rule may become effective only through another rulemaking action initiated under this chapter.

SECTION 31. IC 4-22-2.1-1, AS AMENDED BY P.L.139-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. Except for a rule that is the subject of a rulemaking action under IC 13-14-9, IC 22-12, IC 22-13, IC 22-14, or IC 22-15, this chapter applies to a rule for which the notice of the first public comment period required by IC 4-22-2-23 is published by an agency after June 30, 2005.

SECTION 32. IC 4-22-2.1-5, AS AMENDED BY P.L.109-2015, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 5. (a) If an agency intends to adopt a rule under IC 4-22-2 that will impose requirements or costs on small businesses, the agency shall prepare a statement that describes the annual economic impact of a rule on all small businesses after the rule is fully implemented. as described in subsection (b). The statement required by this section must include the following:

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

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

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

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

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

(B) not expressly required by:

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

(ii) any other state or federal law.

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

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

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

- (A) The establishment of less stringent compliance or reporting requirements for small businesses.
- (B) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.
- (C) The consolidation or simplification of compliance or reporting requirements for small businesses.
- (D) The establishment of performance standards for small businesses instead of design or operational standards imposed on other regulated entities by the rule.
- (E) The exemption of small businesses from part or all of the requirements or costs imposed by the rule.

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

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

- (1) the conclusion of any phase-in period during which:
 - (A) the rule is gradually made to apply to small businesses or certain types of small businesses; or
 - (B) the costs of the rule are gradually implemented; and
- (2) the rule applies to all small businesses that will be affected by the rule.

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

- (c) The agency shall:
 - (1) publish the statement required under subsection (a) in the Indiana Register as required by IC 4-22-2-24; and
 - (2) deliver a copy of the statement, along with the proposed rule, to the small business ombudsman not later than the date of publication under subdivision (1).

SECTION 33. IC 4-22-2.1-7, AS ADDED BY P.L.188-2005, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 7. Before an agency may act under IC 4-22-2.5 IC 4-22-2.6 to readopt a rule to which the chapter applies, the agency must conduct the review required under IC 4-22-2.5-3.1. **IC 4-22-2.6-4.**

SECTION 34. IC 4-22-2.3 IS ADDED TO THE INDIANA CODE

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1 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2023]:

3 **Chapter 2.3. Transitional Provisions; Exceptions to**
4 **Rulemaking Procedures**

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

- 14 (1) **October 1, 2023; or**
- 15 (2) **if the rule is included on a list described in subsection (d),**
16 **October 1, 2024;**

17 **as applicable. An emergency rule that expires under this subsection**
18 **may not be renewed under IC 4-22-2-37.1 (as effective after June**
19 **30, 2023). If the rule meets the criteria in IC 4-22-2-37.2 for**
20 **adoption as an interim rule, the rule may be readopted under**
21 **IC 4-22-2-37.2.**

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

- 25 (1) **incorporated into a provision of the Indiana**
26 **Administrative Code that before July 1, 2023, was amended**
27 **under the procedures in IC 4-22-2-23 through IC 4-22-2-36**
28 **or IC 13-14-9 (as applicable); or**
- 29 (2) **readopted as part of a provision of the Indiana**
30 **Administrative Code that was readopted under IC 4-22-2.5**
31 **(before its repeal) or IC 13-14-9.5 (before its repeal);**

32 **continues in effect to the extent that the text remains part of the**
33 **provision of the Indiana Administrative Code into which the**
34 **emergency rule text was incorporated.**

35 **(c) An emergency rule adopted under IC 4-22-2-37.1 (as**
36 **effective before July 1, 2023) of the type described in sections 3**
37 **through 9 of this chapter, expires as provided in the applicable**
38 **provisions of sections 3 through 9 of this chapter.**

39 **(d) Not later than September 1, 2023, the governor may submit**
40 **to the publisher a list of rules described in subsection (a) for which**
41 **the expiration under this section is October 1, 2024, instead of**
42 **October 1, 2023. The publisher shall publish a list submitted under**
43 **this subsection in the Indiana Register.**

44 **Sec. 2. Before an emergency rule adopted under IC 4-22-2-37.1**
45 **(as effective after June 30, 2023) expires, the governor by executive**
46 **order may authorize the extension of the emergency rule under the**
47 **expedited procedures in IC 4-22-2-37.3 if the governor determines**
48 **and finds in the executive order that the emergency circumstances**
49 **justifying the emergency rule continue to exist. A rule adopted**

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under the authority of an extension under this section, expires not later than June 30 of the year following the year in which the rule is accepted for filing by the publisher of the Indiana Register.

Sec. 3. The office of the secretary of family and social services may adopt rules under IC 4-22-2-37.3 to implement IC 12-13-16-13 (211 dialing code services). The rule expires not later than one (1) year after the adopted rule is accepted for filing under IC 4-22-2-37.3. An expedited rule described in this section may not be continued in another expedited rule after the expiration of the initial expedited rule.

Sec. 4. The department of natural resources (or to the extent permitted by IC 14-10-2, the natural resources commission) may adopt rules under IC 4-22-2-37.3 to carry out the duties of the department of natural resources under a law listed in IC 14-10-2-5. The rule expires not later than one (1) year after the adopted rule is accepted for filing by the publisher of the Indiana Register. An expedited rule described in this section may be continued in another expedited rule only if the governor determines under IC 4-22-2-37.3(b) that the policy options available to the agency are so limited that use of the additional notice, comment, and review procedures in IC 4-22-2-23 through IC 4-22-2-36 would provide no benefit to persons regulated or otherwise affected by the rule. A person who violates the rule commits a Class C infraction, unless otherwise specified under state law.

Sec. 5. The director of the department of natural resources may temporarily modify or suspend a rule described in IC 14-22-2-6 (fish and wildlife rules) under the procedures in IC 4-22-2-37.3. The adopted rule expires not later than one (1) year after the rule is accepted for filing by the publisher of the Indiana Register. An expedited rule described in this section may not be continued in another expedited rule after the expiration of the initial expedited rule.

Sec. 6. The Indiana education employment relations board may adopt rules under IC 4-22-2-37.3 to implement IC 20-29-6-6.1 (review of collective bargaining agreement). The rule expires not later than one (1) year after the adopted rule is accepted for filing by the publisher of the Indiana Register. An expedited rule described in this section may not be continued in another expedited rule after the expiration of the initial expedited rule.

Sec. 7. The Indiana state board of education may adopt rules under IC 4-22-2-37.3 for the provision of special education or related services to an eligible choice scholarship student who receives an amount under IC 20-51-4-4(a)(2). The rule expires not later than one (1) year after the adopted rule is accepted for filing by the publisher of the Indiana Register.

Sec. 8. (a) The department of financial institutions shall adopt rules under IC 4-22-2-37.3 announcing:

- (1) sixty (60) days before January 1 of each odd-numbered year in which dollar amounts under IC 24-4.5 (Uniform Consumer Credit Code) are to change, the changes in dollar

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1 amounts required by IC 24-4.5-1-106(2); and
 2 (2) promptly after the changes occur, changes in the Index
 3 required by IC 24-4.5-1-106(3), including, when applicable,
 4 the numerical equivalent of the Reference Base Index under
 5 a revised Reference Base Index and the designation or title
 6 of any index superseding the Index.

7 The rule expires not later than January 1 of the next
 8 odd-numbered year after the department of financial institutions
 9 is required to issue the rule.

10 (b) The department of financial institutions may adopt a rule
 11 permitted under IC 24-4.4-1-101 (licensing system for creditors
 12 and mortgage loan originators) or IC 24-4.5 (Uniform Consumer
 13 Credit Code) under IC 4-22-2-37.3 if the department of financial
 14 institutions declares an emergency. The rule expires not later than
 15 two (2) years after the adopted rule is accepted for filing by the
 16 publisher of the Indiana Register.

17 (c) The department of financial institutions shall adopt rules
 18 under IC 4-22-2-37.3 in the same manner provided in subsection
 19 (a) for the adjustments required under IC 24-9-2-8 concerning high
 20 cost home loans. The rule expires not later than January 1 of the
 21 next odd-numbered year after the department of financial
 22 institutions is required to issue the rule.

23 (d) The department of financial institutions may adopt rules
 24 described in 34-55-10-2 (bankruptcy exemptions; limitations) and
 25 IC 34-55-10-2.5 in conformity with the procedures in IC 4-22-2-23
 26 through IC 4-22-2-36 or the expedited procedures in
 27 IC 4-22-2-37.3. A rule adopted under IC 4-22-2-37.3 expires not
 28 later than two (2) years after the adopted rule is accepted for filing
 29 by the publisher of the Indiana Register.

30 (e) An expedited rule described in this section may be
 31 continued in another expedited rule only if the governor
 32 determines under IC 4-22-2-37.3(b) that the policy options
 33 available to the agency are so limited that use of the additional
 34 notice, comment, and review procedures in IC 4-22-2-23 through
 35 IC 4-22-2-36 would provide no benefit to persons regulated or
 36 otherwise affected by the rule.

37 **Sec. 9.** The Indiana board of pharmacy may adopt rules under
 38 IC 4-22-2-37.3 to declare that a substance is a synthetic drug if the
 39 board finds that the substance:

- 40 (1) has been scheduled or emergency scheduled by the United
 41 States Drug Enforcement Administration;
- 42 (2) has been scheduled, emergency scheduled, or
 43 criminalized by another state; or
- 44 (3) has:
 - 45 (A) a high potential for abuse; and
 - 46 (B) no accepted medical use in treatment in the United
 47 States or lacks accepted safety for use in treatment
 48 under medical supervision.

49 In making a determination, the Indiana board of pharmacy shall

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1 consider the factors described in IC 25-26-13-4.1. Notwithstanding
 2 IC 4-22-2-37.3, the rule becomes effective when the adopted rule is
 3 published in the Indiana Register. The rule expires not later than
 4 June 30 of the year following the year in which the rule is accepted
 5 for filing by the publisher of the Indiana Register. An expedited
 6 rule described in this section may not be continued in another
 7 expedited rule after the expiration of the initial expedited rule.

8 SECTION 35. IC 4-22-2.5 IS REPEALED [EFFECTIVE JULY 1,
 9 2023]. (Expiration and Readoption of Administrative Rules).

10 SECTION 36. IC 4-22-2.6 IS ADDED TO THE INDIANA CODE
 11 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2023]:

13 **Chapter 2.6. Expiration and Readoption of Administrative**
 14 **Rules**

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

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

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

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

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

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

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

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

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

39 **(3) the rule was adopted by an agency not described in**
 40 **subdivision (1) or (2), the rule expires not later than January**
 41 **1, 2027.**

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

47 **(e) The determination of whether an administrative rule**
 48 **expires under this chapter shall be applied at the level of an**
 49 **Indiana Administrative Code section.**

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

4 **(1) without changes in conformity with the procedures in**
5 **sections 3 through 9 of this chapter; or**

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

9 **Sec. 3. (a) Except as provided in subsection (b), if an agency**
10 **intends to readopt a rule, the agency shall, not later than January**
11 **1 of the fourth year after the year in which the rule takes effect,**
12 **provide an initial notice of the intended readoption in an electronic**
13 **format designated by the publisher to legislators and legislative**
14 **committees in the manner and on the schedule specified by the**
15 **legislative council or the personnel subcommittee of the legislative**
16 **council acting for the legislative council.**

17 **(b) An agency is not required to provide the initial notice**
18 **under subsection (a) for a rule described in section 1(b)(1) of this**
19 **chapter.**

20 **Sec. 4. (a) To readopt a rule, an agency must conduct a review**
21 **of the rule to consider the continued need for the rule and whether**
22 **the rule, if readopted, will do the following:**

23 **(1) Minimize expenses to:**

24 **(A) regulated entities that are required to comply with**
25 **the rule;**

26 **(B) persons who pay taxes or pay fees for government**
27 **services affected by the rule; and**

28 **(C) consumers of products and services of regulated**
29 **entities affected by the rule.**

30 **(2) Achieve the regulatory goal in the least restrictive**
31 **manner.**

32 **(3) Have benefits that exceed the fiscal and economic costs of**
33 **the rule.**

34 **(4) Avoid duplicating and conflicting standards with other**
35 **federal, state, or local laws, rules, regulations, or ordinances.**

36 **(5) Be written for ease of comprehension.**

37 **(6) Have practicable enforcement.**

38 **(b) In the review, the agency shall reexamine previous cost**
39 **benefit, economic impact, fiscal impact, and regulatory burden**
40 **statements prepared by the agency for the rule under IC 4-3-22-13,**
41 **IC 4-3-27-12, IC 4-22-2-28, IC 4-22-2.1-5, or an executive order**
42 **and revise the statements to reflect any change in circumstances**
43 **that affect the analysis. The agency shall identify any alternative**
44 **methods of achieving the purpose of the rule that are less costly or**
45 **less intrusive, or that would otherwise minimize the economic**
46 **impact of the proposed rule on small businesses (as defined in**
47 **IC 4-22-2.1-4) and other regulated entities. The agency also shall**
48 **consider the following:**

49 **(1) The nature of any complaints or comments received from**

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1 the public, including small businesses (as defined in
2 IC 4-22-2.1-4), concerning the rule or the rule's
3 implementation by the agency.

4 (2) The complexity of the rule, including any difficulties
5 encountered by:

6 (A) the agency in administering the rule; or

7 (B) small businesses (as defined in IC 4-22-2.1-4) or
8 other regulated persons in complying with the rule.

9 (3) The degree to which technology, economic conditions, or
10 other factors have changed in the area affected by the rule
11 since the last time the rule was reviewed.

12 (c) The agency shall prepare written findings concerning the
13 agency's determinations under this section.

14 **Sec. 5. (a) If an agency elects to readopt a rule under this**
15 **chapter, the agency shall submit a notice of proposed readoption**
16 **to the publisher not later than the first regular business day in**
17 **September of the year preceding the year in which the rule expires**
18 **under this chapter for publication in the Indiana Register. A**
19 **separate notice must be published for each board or other person**
20 **or entity with rulemaking authority.**

21 (b) The notice must include the following:

22 (1) A general description of the subject matter of all rules
23 proposed to be readopted.

24 (2) A listing of rules that are proposed to be readopted, listed
25 by their titles and subtitles only.

26 (3) A written comment period of thirty (30) days and
27 instructions on how to submit written comments to the
28 agency.

29 (4) A request for comments on whether specific rules should
30 be reviewed through the regular rulemaking process under
31 IC 4-22-2-23 through IC 4-22-2-36 (as modified by
32 IC 13-14-9, when applicable).

33 (5) A summary of the agency's findings under section 4 of
34 this chapter.

35 (6) Any other information required by the publisher.

36 (c) The agency shall submit the material in the form required
37 by IC 4-22-2-20. The agency need not resubmit the documents
38 required by IC 4-22-2-21 if the publisher received a copy of the
39 documents when the rule was previously adopted or amended. The
40 publisher shall review the material submitted under this section
41 and determine the date that the publisher intends to include the
42 material in the Indiana Register. After:

43 (1) establishing the intended publication date; and

44 (2) receiving the material as required by this section;

45 the publisher shall assign a document control number, provide an
46 electronic mail authorization to proceed to the agency, and publish
47 the material on the intended publication date.

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

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1 (b) The agency, after considering the written comments and
2 responses, may do the following:

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

15 (2) Readopt one (1) or more rules within the scope of the
16 notice of proposed readoption without change.

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

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

29 (b) If the rulemaking document complies with this section, the
30 publisher shall:

31 (1) accept the rule for filing; and

32 (2) electronically record the date and time the rule is
33 accepted.

34 Sec. 8. A readopted rule that has been accepted for filing under
35 section 7 of this chapter takes effect on the latest of the following
36 dates:

37 (1) The date that is thirty (30) days from the date and time
38 that the rule was accepted for filing under section 7 of this
39 chapter.

40 (2) The effective date stated by the agency in the rule.

41 (3) The date of compliance with every requirement
42 established by law as a prerequisite to the readoption or
43 effectiveness of the rule.

44 Sec. 9. An agency that terminates a rulemaking action to
45 readopt a rule with or without amendments shall submit a notice
46 of withdrawal of the readoption rulemaking action in the manner
47 provided in IC 4-22-2-41.

48 Sec. 10. If a rule is not readopted and the governor finds that
49 the failure to readopt the rule causes an emergency to exist, the

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1 governor may, by executive order issued before the rule's
 2 expiration date, postpone the expiration date of the rule until a
 3 date that is not later than one (1) year after the date specified in
 4 section 1 of this chapter.

5 **Sec. 11. The publisher shall remove all rules that have expired**
 6 **under this chapter from the Indiana Administrative Code.**
 7 **However, a rule that has expired but is readopted under this**
 8 **chapter (or IC 4-22-2.5 (before its repeal) or IC 13-14-9.5 (before**
 9 **its repeal)) may not be removed from the Indiana Administrative**
 10 **Code.**

11 SECTION 37. IC 12-10.5-1-9, AS AMENDED BY P.L.123-2006,
 12 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2023]: Sec. 9. (a) Before finally adopting a rule under
 14 IC 4-22-2 to implement this chapter, the division shall consult with and
 15 fully consider any comments submitted by:

- 16 (1) caretakers providing care for a special needs individual under
 17 this chapter;
- 18 (2) individuals with special needs receiving care from a
 19 caretaker under this chapter;
- 20 (3) area agencies on aging;
- 21 (4) consumers and providers of home and community based
 22 services under IC 12-10-10 and IC 12-10-11.5; and
- 23 (5) any other agency, volunteer group, faith based group, or
 24 individual that the division considers appropriate;

25 to ensure that the rule complies with the requirements set forth in
 26 subsection (b).

27 (b) Rules adopted under this chapter must:

- 28 (1) include protections for the rights, safety, and welfare of
 29 individuals with special needs receiving care from a caretaker
 30 under this chapter, including reasonable monitoring and
 31 reporting requirements;
- 32 (2) serve distinct populations, including:
 33 (A) the aged;
- 34 (B) persons with developmental disabilities; and
- 35 (C) persons with physical disabilities;

36 in a manner that recognizes, and appropriately responds to, the
 37 particular needs of the population;

- 38 (3) not create barriers to the availability of home and community
 39 based services under IC 12-10-10 and IC 12-10-11.5 by
 40 imposing costly or unduly burdensome requirements on
 41 caretakers or other service providers, including:

- 42 (A) requirements for proof of financial responsibility; and
- 43 (B) monitoring, enforcement, reporting, or other
 44 administrative requirements; and

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

47 (c) Before submitting a rule adopted under this chapter to the
 48 attorney general for final approval under IC 4-22-2-31, the division
 49 shall submit to the publisher (as defined in IC 4-22-2-3(f)) for

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1 publication in the Indiana Register the division's written response ~~under~~
2 ~~IC 4-22-2-23~~ to any comments received from the parties described in
3 subsection (a). Submissions to the publisher shall be made in the
4 electronic format specified by the publisher.

5 SECTION 38. IC 12-10.5-2-3, AS AMENDED BY P.L.123-2006,
6 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2023]: Sec. 3. (a) Before finally adopting a rule under
8 IC 4-22-2 to implement this chapter, the division shall consult with and
9 fully consider any comments submitted by:

- 10 (1) continuum of care providers providing care under this
- 11 chapter;
- 12 (2) individuals receiving care under this chapter;
- 13 (3) area agencies on aging;
- 14 (4) consumers and providers of home and community based
- 15 services under IC 12-10-10 and IC 12-10-11.5; and
- 16 (5) any other agency, volunteer group, faith based group, or
- 17 individual that the division considers appropriate;

18 to ensure that the rule complies with the requirements set forth in
19 subsection (b).

20 (b) Rules adopted under this chapter must:

- 21 (1) include protections for the rights, safety, and welfare of
- 22 individuals receiving care under this chapter;
- 23 (2) serve distinct populations, including:
 - 24 (A) the aged;
 - 25 (B) persons with developmental disabilities; and
 - 26 (C) persons with physical disabilities;
- 27 in a manner that recognizes, and appropriately responds to, the
- 28 particular needs of the population;
- 29 (3) not create barriers to the availability of home and community
- 30 based services under IC 12-10-10 and IC 12-10-11.5 by
- 31 imposing costly or unduly burdensome requirements on
- 32 continuum of care providers or other service providers,
- 33 including:
 - 34 (A) requirements for proof of financial responsibility; and
 - 35 (B) monitoring, enforcement, reporting, or other
 - 36 administrative requirements; and
 - 37 (4) otherwise comply with IC 12-10-10, IC 12-10-11.5, and this
 - 38 chapter.

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

46 SECTION 39. IC 13-14-9-1, AS AMENDED BY P.L.133-2012,
47 SECTION 89, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
48 JULY 1, 2023]: Sec. 1. (a) Except as provided in sections 8 and 14 of
49 this chapter, this chapter applies to the following:

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- 1 (1) The board.
- 2 (2) The underground storage tank financial assurance board
- 3 established by IC 13-23-11-1.
- 4 (b) In addition to the requirements of IC 4-22-2 and IC 13-14-8, a
- 5 board may not adopt a rule except in accordance with this chapter.
- 6 (c) **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.**
- 9 SECTION 40. IC 13-14-9-3, AS AMENDED BY P.L.100-2006,
- 10 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 11 JULY 1, 2023]: Sec. 3. (a) **Except as provided in subsection (b);** The
- 12 department shall provide notice in the Indiana Register of the first
- 13 public comment period required by section 2 of this chapter.
- 14 (b) **To publish notice of the first public comment period in the**
- 15 **Indiana Register, the agency must submit the following to the**
- 16 **publisher:**
- 17 (1) **The full text of the agency's proposed rule (excluding the**
- 18 **full text of a matter incorporated by reference under**
- 19 **IC 4-22-2-21). The agency shall submit the rule in the form**
- 20 **required by IC 4-22-2-20 and with the documents required**
- 21 **by IC 4-22-2-21.**
- 22 (2) **The latest version of the regulatory analysis (including**
- 23 **any appendices containing any data, studies, or analysis**
- 24 **referenced in the regulatory analysis) submitted to the**
- 25 **budget agency and the office of management and budget**
- 26 **under IC 4-22-2-22.8, <**
- 27 **> (3) The determination of the budget agency and the office of**
- 28 **management and budget authorizing commencement of the**
- 29 **first and second public comment periods on the proposed**
- 30 **rule under IC 4-22-2-22.8.**
- 31 (4) **The notice required under subsection (c).**
- 32 (c) A notice provided under this section must do the following:
- 33 (1) Identify the authority under which the proposed rule is to be
- 34 adopted.
- 35 (2) Describe the subject matter and the basic purpose of the
- 36 proposed rule. The description required by this subdivision must:
- 37 (A) list all alternatives being considered by the department
- 38 at the time of the notice;
- 39 (B) state whether each alternative listed under clause (A)
- 40 creates:
- 41 (i) a restriction or requirement more stringent than a
- 42 restriction or requirement imposed under federal law;
- 43 or
- 44 (ii) a restriction or requirement in a subject area in
- 45 which federal law does not impose restrictions or
- 46 requirements;
- 47 (C) state the extent to which each alternative listed under
- 48 clause (A) differs from federal law;
- 49 (D) include any information known to the department about

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- 1 the potential fiscal impact of each alternative under clause
 2 (A) that creates:
 3 (i) a restriction or requirement more stringent than a
 4 restriction or requirement imposed under federal law;
 5 or
 6 (ii) a restriction or requirement in a subject area in
 7 which federal law does not impose restrictions or
 8 requirements; and
 9 (E) set forth the basis for each alternative listed under
 10 clause (A).
- 11 (3) Describe the relevant statutory or regulatory requirements or
 12 restrictions relating to the subject matter of the proposed rule
 13 that exist before the adoption of the proposed rule.
- 14 (4) Request the submission of alternative ways to achieve the
 15 purpose of the proposed rule.
- 16 (5) Request the submission of comments, including suggestions
 17 of specific language for the proposed rule.
- 18 (6) Include a detailed statement of the issue to be addressed by
 19 adoption of the proposed rule.
- 20 **(7) Include the latest version of the regulatory analysis**
 21 **(excluding any appendices containing any data, studies, or**
 22 **analysis referenced in the regulatory analysis) submitted to**
 23 **the budget agency and the office of management and budget**
 24 **under IC 4-22-2-22.8.**
- 25 **(8) Include information concerning where, when, and how a**
 26 **person may submit written comments on the proposed rule,**
 27 **including contact information concerning the small business**
 28 **regulatory coordinator required by IC 4-22-2-28.1.**
- 29 **(9) Include information concerning where, when, and how a**
 30 **person may inspect and copy any data, studies, or analyses**
 31 **referenced in a regulatory analysis under subdivision (7).**
- 32 **(10) Include information concerning where, when, and how**
 33 **a person may inspect any documents incorporated by**
 34 **reference into the proposed rule under IC 4-22-2-21.**
- 35 **(11) Include an indication that the notice is for the first of**
 36 **two (2) thirty (30) day periods in which the public may**
 37 **comment on the proposed rule.**
- 38 **Inadequacy or insufficiency of the published description or**
 39 **regulatory analysis does not invalidate a rulemaking action.**
- 40 ~~(b)~~ **(d)** This section does not apply to rules adopted under
 41 IC 13-18-22-2, IC 13-18-22-3, or IC 13-18-22-4.
- 42 ~~(c)~~ **(e)** The notice required under subsection (a) shall be published
 43 electronically in the Indiana Register under procedures established by
 44 the publisher. The publisher shall review materials submitted under
 45 this section and determine the date that the publisher intends to
 46 publish the text of the proposed rule and the notice in the Indiana
 47 Register. If the submitted material complies with this section, the
 48 publisher shall establish the intended publication date, assign a
 49 document control number to the proposed rule, and provide a

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1 written or an electronic mail authorization to proceed to the
2 agency. The publisher shall publish the following in the Indiana
3 Register on the intended publication date:

- 4 (1) The notice of the first comment period.
- 5 (2) The full text of the agency's proposed rule (excluding the
6 full text of a matter incorporated by reference under
7 IC 4-22-2-21).

8 SECTION 41. IC 13-14-9-4, AS AMENDED BY P.L.218-2016,
9 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2023]: Sec. 4. (a) The department shall provide notice in the
11 Indiana Register of the second public comment period required by
12 section 2 of this chapter.

13 (b) To publish a notice of the second public comment period in
14 the Indiana Register, the agency must submit the following to the
15 publisher:

- 16 (1) The full text of the agency's proposed rule (excluding the
17 full text of a matter incorporated by reference under
18 IC 4-22-2-21). The agency shall submit the rule in the form
19 required by IC 4-22-2-20 and with the documents required
20 by IC 4-22-2-21, if these documents have not already been
21 submitted to the publisher.
- 22 (2) Either a statement indicating that no changes in the
23 regulatory analysis have been made from the version of the
24 regulatory analysis published under section 3 of this chapter
25 or the latest version of the regulatory analysis (including any
26 appendices containing any data, studies, or analysis
27 referenced in the regulatory analysis) submitted to the
28 budget agency and the office of management and budget
29 under IC 4-22-2-22.8, if any changes have been made in the
30 regulatory analysis after submitting the material under
31 section 3 of this chapter.

32 (3) The notice required under subsection (c).

33 (c) A notice provided under this section must do the following:

- 34 (1) Contain the full text of the proposed rule; to the extent
35 required under IC 4-22-2-24(c).
- 36 (2) (1) Contain a summary of the response of the department to
37 written comments submitted under section 3 of this chapter
38 during the first public comment period.
- 39 (2) Request the submission of comments, including
40 suggestions of specific amendments to the language contained
41 in the proposed rule and indicate where, when, and how a
42 person may submit written comments on the proposed rule,
43 including contact information concerning the small business
44 regulatory coordinator required by IC 4-22-2-28.1.
- 45 (3) Contain the full text of the commissioner's written
46 findings under section 7 of this chapter, if applicable. Include a
47 statement indicating the date, time, and place at which the
48 public hearing on the proposed rule will be convened.
- 49 (4) Identify each element of the proposed rule that imposes

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a restriction or requirement on persons to whom the proposed rule applies that:

- (A) is more stringent than a restriction or requirement imposed under federal law; or
- (B) applies in a subject area in which federal law does not impose a restriction or requirement.

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

- (A) the environmental circumstance or hazard that dictates the imposition of the proposed restriction or requirement to protect human health and the environment;
- (B) examples in which federal law is inadequate to provide the protection referred to in clause (A); and
- (C) the:

- (i) estimated fiscal impact; and
- (ii) expected benefits;

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

~~(7)~~ (6) For any element of the proposed rule that imposes a restriction or requirement that is more stringent than a restriction or requirement imposed under federal law or that applies in a subject area in which federal law does not impose restrictions or requirements, describe the availability for public inspection of all materials relied upon by the department in the development of the proposed rule, including, if applicable:

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

(7) Either a statement indicating that no changes in the regulatory analysis have been made from the version of the regulatory analysis published under section 3 of this chapter or the latest version of the regulatory analysis (excluding any appendices containing any data, studies, or analysis referenced in the regulatory analysis) submitted to the budget agency and the office of management and budget under IC 4-22-2-22.8, if any changes have been made in the regulatory analysis after submitting the material under section 3 of this chapter.

(8) Include an explanation of any differences between the text of the proposed rule published for the first comment period under section 3 of this chapter and the text of the

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proposed rule published for the second comment period under this section.

(9) Include information concerning where, when, and how a person may inspect and copy the regulatory analysis and any data, studies, or analyses referenced in subdivision (7).

(10) Include information concerning where, when, and how a person may inspect any documents incorporated by reference into the proposed rule under IC 4-22-2-21.

(11) Include an indication that the notice is for the second of two (2) thirty (30) day periods in which the public may comment on the proposed rule and that following the second comment period the agency may adopt a version of the proposed rule that is the same as or does not substantially differ from the text of the proposed rule published under this section.

Inadequacy or insufficiency of the subject matter description or summary of the regulatory analysis in the published notice does not invalidate a rulemaking action.

- (b) (d) The notice required under subsection (a):
 - (1) shall be published electronically in the Indiana Register under procedures established by the publisher; and
 - (2) if any element of the proposed rule to which the notice relates imposes a restriction or requirement that is more stringent than a restriction or requirement imposed under federal law, shall be submitted in an electronic format under IC 5-14-6 to the executive director of the legislative services agency, who shall present the notice to the legislative council established by IC 2-5-1.1-1.

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

- (1) The notice of the second comment period.
- (2) The full text of the agency's proposed rule (excluding the full text of a matter incorporated by reference under IC 4-22-2-21).

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

(d) (f) Subsections (b)(2) and Subsection (e) (e) do does not

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1 prohibit or restrict the commissioner, the department, or the board
2 from:

- 3 (1) adopting emergency rules under IC 4-22-2-37.1;
- 4 (2) taking emergency action under IC 13-14-10; or
- 5 (3) temporarily:
 - 6 (A) altering ordinary operating policies or procedures; or
 - 7 (B) implementing new policies or procedures;

8 in response to an emergency situation.

9 SECTION 42. IC 13-14-9-4.2, AS AMENDED BY P.L.123-2006,
10 SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2023]: Sec. 4.2. Not less than fourteen (14) days before the
12 date of preliminary adoption of a proposed rule by a board, the
13 department shall make available to the board the ~~fi~~**iscal impact**
14 **statement latest version of the regulatory analysis** prepared by the
15 ~~office of management and budget with respect to for~~ the proposed
16 rule. ~~Under IC 4-22-2-28(c).~~

17 SECTION 43. IC 13-14-9-4.5 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4.5. (a) Except for a
19 rule

20 (1) that has been preliminarily adopted by a board in a form that
21 is:

- 22 (A) identical to; or
- 23 (B) not substantively different from;

24 the proposed rule published in a second notice under section 4
25 of this chapter; or

26 (2) for which the commissioner has made a determination and
27 prepared written findings under section 7 or 8 of this chapter;
28 a board may not adopt a rule under this chapter until the board has
29 conducted a third public comment period that is at least ~~twenty-one~~
30 **(21) thirty (30)** days in length.

31 (b) The department shall publish notice of a third public comment
32 period with the

- 33 ~~(1) text;~~
- 34 ~~(2) summary; and~~
- 35 ~~(3) fiscal analysis;~~

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

38 (c) ~~The notice of a third public comment period that must be~~
39 ~~published in the Indiana Register under subsection (b) must request the~~
40 ~~submission of comments, including suggestions of specific~~
41 ~~amendments, that concern only the portion of the preliminarily adopted~~
42 ~~rule that is substantively different from the language contained in the~~
43 ~~proposed rule published in a second notice under section 4 of this~~
44 ~~chapter.~~

45 SECTION 44. IC 13-14-9-5, AS AMENDED BY P.L.123-2006,
46 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
47 JULY 1, 2023]: Sec. 5. (a) A board may not adopt a rule until all of the
48 following occur:

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

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

(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 a third 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 a second notice under section 4 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 public comment period is required under section 4.5 of this chapter, the department publishes notice of the third 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 or 4 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 45. 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:

- (1) The full text of the proposed rule, as most recently prepared by the department.
- (2) The written responses of the department to all comments received:

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(A) during the immediately preceding comment period for a board meeting held under section 5(a)(1) of this chapter;
(B) during the immediately preceding board meeting under section 5(a)(1) of this chapter for a board meeting held under section 5(a)(3) of this chapter if a third public comment period is not required under section 4.5 of this chapter; or

(C) during:
(i) a third public comment period that address the portion of the preliminarily adopted rule that is substantively different from the language contained in the proposed rule published in a second notice under section 4 of this chapter; and
(ii) the immediately preceding board meeting held under section 5(a)(1) of this chapter;
for a board meeting held under section 5(a)(3) of this chapter if a third public comment period is required under section 4.5 of this chapter.

(3) The full text of the ~~office of management and budget fiscal~~ **latest version of regulatory** analysis if a ~~fiscal~~ analysis is required under ~~IC 4-22-2-28~~. **prepared under IC 4-22-2-22.7.**

SECTION 46. IC 13-14-9-15 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 15. Rules adopted in accordance with this chapter by the department of environmental management or a board that has rulemaking authority under IC 13 expire as provided in IC 4-22-2.6.**

SECTION 47. IC 13-14-9-16 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **For a rule document subject to this chapter, the one (1) year period established under IC 4-22-2-25 in which to adopt a rule and obtain the approval or deemed approval of the governor commences on the date that the initial comment period notice for the rule document is published in the Indiana Register under section 3 of this chapter, (if the section 3 comment period is waived under section 7 of this chapter) section 4 of this chapter, section 8 of this chapter, or section 14 of this chapter (as applicable). If an agency determines that a rule cannot be adopted within one (1) year after the publication of the notice, the agency shall, before two hundred fifty (250) days following the publication of the notice, notify the publisher by electronic means:**

- (1) the reasons why the rule was not adopted and the expected date the rule will be completed; and**
- (2) the expected date the rule will be approved or deemed approved by the governor or withdrawn under IC 4-22-2-41.**

(b) If a rule is not approved before the later of:
(1) one (1) year after the agency publishes the initial notice of intent under this chapter; or
(2) the expected date contained in a notice concerning the

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1 rule that is provided to the publisher under subsection (a);
2 a later approval or deemed approval is ineffective, and the rule
3 may become effective only through another rulemaking action
4 initiated under this chapter.

5 SECTION 48. IC 13-14-9.5 IS REPEALED [EFFECTIVE JULY
6 1, 2023]. (Expiration and Readoption of Administrative Rules).

7 SECTION 49. IC 13-19-3-3, AS AMENDED BY P.L.120-2022,
8 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 UPON PASSAGE]: Sec. 3. (a) As used in this section and section 3.1
10 of this chapter, "coal combustion residuals" means fly ash, bottom ash,
11 boiler slag, and flue gas desulfurization materials generated from
12 burning coal for the purpose of generating electricity by electric
13 utilities and independent power producers.

14 (b) ~~As used in~~ **The following definitions apply throughout** this
15 section:

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

19 (2) **"Legacy generation resource" means an electric**
20 **generating facility that is directly or indirectly owned by a**
21 **corporation that was originally formed for the purpose of**
22 **providing power to the federal government for use in the**
23 **nation's defense or in furtherance of national interests. The**
24 **term includes the Ohio Valley Electric Corporation.**

25 (c) The board ~~may~~ **shall** adopt rules under section 1(a)(1) of this
26 chapter **concerning coal combustion residuals. The rules adopted**
27 **under this subsection:**

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

32 (2) **shall not impose a restriction or requirement that is more**
33 **stringent than the corresponding restriction or requirement**
34 **imposed under the federal CCR rule; and**

35 (3) **shall not impose a restriction or requirement that is not**
36 **imposed by the federal CCR rule.**

37 (d) The department shall do the following:

38 (1) Establish a state permit program under Section 2301 of the
39 federal Water Infrastructure Improvements for the Nation Act
40 (42 U.S.C. 6945(d)) for the implementation in Indiana of the
41 federal CCR rule.

42 (2) Submit to the administrator of the United States
43 Environmental Protection Agency under 42 U.S.C.
44 6945(d)(1)(A) evidence of the state permit program.

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

47 (e) Not later than May 15, 2021, the department shall notify the
48 United States Environmental Protection Agency of its intention to
49 establish a state permit program described in subsection (d)(1) and to

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1 seek approval of the state permit program under 42 U.S.C. 6945(d)(1).
2 (f) Under IC 4-22-2 and IC 13-14-9:
3 (1) the department shall initiate rulemaking for the establishment
4 of the state permit program not more than sixty (60) days after
5 the effective date of the SECTION of Senate Enrolled Act
6 271-2021 amending this section; and
7 (2) the board shall adopt a final rule for the establishment of the
8 state permit program not more than sixteen (16) months after
9 initiation of the rulemaking under subdivision (1).
10 (g) The state permit program established under this section must
11 not establish requirements for any surface impoundment of coal
12 combustion residuals unless and until the state permit program is
13 approved by the administrator of the United States Environmental
14 Protection Agency under 42 U.S.C. 6945(d)(1). **The authority of the**
15 **department to establish requirements under the state permit**
16 **program established under this section is the only authority the**
17 **department has to establish requirements for a surface**
18 **impoundment of coal combustion residuals located on the grounds**
19 **of a legacy generation resource.**
20 (h) The definitions set forth in Section 257.53 of the federal CCR
21 rule, as in effect January 1, 2021, apply throughout subsection (i).
22 (i) The department shall charge the following fees under the state
23 permit program established under this section:
24 (1) An initial one (1) time permit fee of twenty thousand five
25 hundred dollars (\$20,500) for each surface impoundment of coal
26 combustion residuals regulated under the state permit program.
27 (2) An annual fee of twenty thousand five hundred dollars
28 (\$20,500) for each surface impoundment of coal combustion
29 residuals regulated under the state permit program that has not
30 completed closure in accordance with Section 257.102 of the
31 federal CCR rule. The duty to pay the fee established by this
32 subdivision does not apply on an annual basis until three
33 hundred sixty-five (365) days after the initial one (1) time permit
34 fee established by subdivision (1) has been assessed.
35 (3) An annual fee of ten thousand dollars (\$10,000) for each
36 surface impoundment of coal combustion residuals regulated
37 under the state permit program that has been closed and for
38 which post-closure care has been initiated and is still required in
39 accordance with Section 257.104 of the federal CCR rule. The
40 duty to pay the fee established by this subdivision does not apply
41 on an annual basis until three hundred sixty-five (365) days after
42 the initial one (1) time permit fee established by subdivision (1)
43 has been assessed.
44 Fees collected under this subsection shall be deposited in the CCR
45 program fund established by section 3.2 of this chapter.
46 (j) Not later than July 1, 2027, and before the end of each
47 succeeding period of five (5) years, the board shall review the:
48 (1) costs to the department of operating the state permit program
49 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 50. IC 25-1-5.3 IS ADDED TO THE INDIANA CODE
 13 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2023]:

15 **Chapter 5.3. Failure to Enact Licensure Rules**

16 **Sec. 1. The following definitions apply throughout this**
 17 **chapter:**

18 (1) "Agency" has the meaning set forth in IC 25-1-5-2.

19 (2) "Board" has the meaning set forth in IC 25-1-5-2.

20 (3) "Compliant", with respect to a licensure rule, means a
 21 licensure rule that the agency or a board has adopted.

22 (4) "Enactment date" means the date on which a statute
 23 requires rulemaking for a licensure rule to commence.

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

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

27 (7) "Licensure rule" means a rule that:

28 (A) relates to the issuance of a license, certificate,
 29 registration, or permit, or a requirement or prerequisite
 30 for obtaining a license, or keeping a license in good
 31 standing; and

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

34 (8) "Noncompliant", with respect to a licensure rule, means
 35 a licensure rule that the agency or a board has not adopted
 36 within eighteen (18) months of the enactment date.

37 **Sec. 2. (a) If a licensee believes that the agency or a board has**
 38 **failed to adopt a licensure rule within eighteen (18) months of the**
 39 **enactment date, the licensee may request in writing that the**
 40 **executive director determine that the licensure rule is**
 41 **noncompliant. The executive director shall issue the determination**
 42 **of noncompliance or compliance in writing.**

43 (b) If the executive director determines that the licensure rule
 44 is noncompliant, the licensee is entitled to the relief described in
 45 section 3 of this chapter.

46 (c) If:

47 (1) the executive director determines that the licensure rule
 48 is compliant; or

49 (2) at least thirty (30) days have passed since the licensee

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1 requested the executive director to confirm that the licensure
2 rule is noncompliant and the executive director has not
3 issued a determination;

4 the licensee may request that the governor or the attorney general
5 determine that the licensure rule is a noncompliant. A licensee may
6 not request that both the governor and the attorney general make
7 a determination under this subsection.

8 (d) If the governor or the attorney general determines that the
9 licensure rule is noncompliant, the licensee is entitled to the relief
10 described in section 3 of this chapter.

11 Sec. 3. (a) If the executive director, governor, or attorney
12 general determines that a licensure rule is noncompliant, the
13 licensee:

14 (1) is not required to pay the license fee to which the
15 licensure rule relates from the enactment date to the date the
16 licensure rule becomes compliant (if applicable); and

17 (2) is entitled to a refund of any license fee to which the
18 licensure rule relates from the enactment date to the date the
19 licensure rule becomes compliant (if applicable).

20 (b) The failure to pay a license fee as authorized under this
21 section does not affect the validity of the license.

22 Sec. 4. (a) If the executive director has determined under
23 section 2 of this chapter that a licensure rule is noncompliant, and
24 the agency later adopts a licensure rule, the executive director may,
25 upon the request of any person, including the executive director,
26 make a new determination concerning the licensure rule. The
27 executive director shall issue the determination in writing.

28 (b) If the executive director determines that the licensure rule
29 is compliant, a licensee who disagrees with the determination may
30 request, not later than thirty (30) days after issuance of the new
31 determination, that the governor or attorney general review the
32 determination. The licensee may not request that both the
33 governor and the attorney general review the determination. If the
34 governor or attorney general determines that the licensure rule is
35 noncompliant, the determination of the governor or attorney
36 general controls.

37 Sec. 5. If the governor or attorney general determined that a
38 licensure rule was noncompliant under section 2 of this chapter,
39 and the agency later adopts a licensure rule, upon the request of
40 any person, the governor or attorney general may make a new
41 determination concerning the licensure rule. The governor or
42 attorney general shall issue the determination in writing.

43 Sec. 6. If the executive director, under section 4 of this chapter,
44 or the governor or attorney general, under section 5 of this
45 chapter, determines that a formerly noncompliant licensure rule
46 is now compliant, a licensee is required to pay the license fee to
47 which the licensure rule relates, beginning:

48 (1) from the date the new determination was issued; or
49 (2) if the new determination was issued by the executive
50 director under section 4(a) of this chapter and the licensee

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1 sought review by the governor or attorney general under
2 section 4(b) of this chapter, from the date the governor
3 attorney general issued a determination;
4 **whichever is later.**
5 SECTION 51. [EFFECTIVE UPON PASSAGE] (a) **After June**
6 **30, 2023, a rule may be adopted as an emergency rule only for the**
7 **purposes and through the procedures in IC 4-22-2-37.1 (as effective**
8 **after June 30, 2023). Any additional authority in a statute outside**
9 **IC 4-22 to adopt rules through the emergency rulemaking**
10 **procedures in IC 4-22-2-37.1 (as effective before July 1, 2023, or**
11 **after June 30, 2023) is void. The code revision commission shall**
12 **provide in calendar year 2023 for the preparation of a bill for**
13 **introduction in the 2024 regular session of the general assembly**
14 **that removes language outside IC 4-22 permitting the adoption of**
15 **emergency rules.**
16 **(b) This SECTION expires January 1, 2024.**
17 SECTION 52. **An emergency is declared for this act.**

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