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HOUSE BILL No. 1623

Proposed Changes to February 14, 2023 printing by AM162315

DIGEST OF PROPOSED AMENDMENT

Coal combustion residuals. Removes a SECTION from the bill concerning coal combustion residuals.

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

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1 consider in its analysis any verified data provided voluntarily by
 2 interested parties, regulated persons, and nonprofit corporations whose
 3 members may be affected by the proposed rule. A cost benefit analysis
 4 prepared under this section is a public document, subject to the
 5 following:

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

- 15 (A) information that is confidential under IC 5-14-3-4; or
 16 (B) confidential and proprietary business plans and other
 17 confidential information.

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

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

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

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

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

41 ~~(2) a technical amendment with no substantive effect on an~~
 42 ~~existing Indiana rule;~~

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1 the OMB may not prepare a cost benefit analysis of the rule under this
 2 section. The agency shall submit the proposed rule to the OMB with a
 3 statement explaining how the proposed rule meets the requirements of
 4 this subsection. If the OMB finds that the rule meets the requirements
 5 of this subsection, the OMB shall provide its findings to the governor
 6 and to the legislative council in an electronic format under IC 5-14-6.
 7 If the agency amends or modifies the proposed rule after the OMB
 8 finds that a cost benefit analysis may not be prepared for the rule, the
 9 agency shall resubmit the proposed rule to the OMB either for a new
 10 determination that the rule meets the requirements of this subsection,
 11 or for the OMB to prepare a cost benefit analysis of the rule under this
 12 section.

13 SECTION 2. IC 4-21.5-2-8 IS ADDED TO THE INDIANA CODE
 14 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 15 1, 2023]: **Sec. 8. The amendments made to IC 4-21.5-3-27.5 in the
 16 2023 session of the general assembly only apply to agency actions
 17 commenced under IC 4-21.5-3 after June 30, 2023.**

18 SECTION 3. IC 4-21.5-3-27.5, AS ADDED BY P.L.199-2021,
 19 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2023]: Sec. 27.5. In a proceeding under this chapter
 21 concerning an agency action, the administrative law judge shall order
 22 the agency to pay the reasonable attorney's fees incurred in the
 23 proceeding by the party challenging the agency action if the party
 24 challenging the agency action proves, by a preponderance of the
 25 evidence, that:

- 26 (1) the agency's action was frivolous or groundless; or
- 27 (2) the agency pursued the action in bad faith;
- 28 **(3) the agency has failed to demonstrate that the agency**
- 29 **action is based on a standard or an interpretation of a**
- 30 **standard that has the force of law; or**
- 31 **(4) the agency has failed to demonstrate that the agency**
- 32 **acted within its legal authority.**

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

- 37 (1) The amendments made to sections 13, 19, 23, 25, and 28 of
 38 this chapter apply to a rulemaking action that commences after
 39 June 30, 1995.
- 40 (2) The addition of sections 23.1 and 46 (repealed) of this
 41 chapter applies to a rulemaking action that commences after
 42 June 30, 1995.

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

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

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

11 (1) Any military officer or board.

12 (2) Any state educational institution.

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

15 (1) A resolution or directive of any agency that relates solely to
 16 internal policy, internal agency organization, or internal
 17 procedure and does not have the effect of law.

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

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

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

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

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

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

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

34 (d) Except as specifically set forth in IC 13-14-9, IC 13-14-9
 35 provides alternative procedures for notice and public comment
 36 concerning proposed rules for the environmental rules board and the
 37 underground storage tank financial assurance board. The department
 38 of environmental management, the environmental rules board, and the
 39 underground storage tank financial assurance board shall comply with
 40 the procedures in IC 13-14-9 in lieu of complying with sections 23, 24,
 41 26, 27, and 29 of this chapter. ~~do not apply to rulemaking actions under~~
 42 ~~IC 13-14-9. In adopting rules, all other provisions of IC 4-22-2~~

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1 **apply to these agencies, including sections 22.7 and 22.8 of this**
 2 **chapter.**

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

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

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

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

33 (b) **If requested in the manner specified by the legislative**
 34 **council or the personnel subcommittee of the legislative council**
 35 **acting for the legislative council, an agency shall provide to the**
 36 **legislative services agency any data, studies, or analyses relied on**
 37 **by the agency to develop a regulatory analysis or a revised**
 38 **regulatory analysis. The agency shall comply with any policies**
 39 **adopted by the legislative council or the personnel subcommittee**
 40 **of the legislative council governing the format, timing, and manner**
 41 **of delivery of the data, studies, or analyses.**

42 SECTION 9. IC 4-22-2-19.5 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 19.5. (a) To the extent
2 possible, a rule adopted under this article ~~or under IC 13-14-9.5~~ shall
3 comply with the following:

- 4 (1) Minimize the expenses to:
 - 5 (A) regulated entities that are required to comply with the
 - 6 rule;
 - 7 (B) persons who pay taxes or pay fees for government
 - 8 services affected by the rule; and
 - 9 (C) consumers of products and services of regulated entities
 - 10 affected by the rule.
- 11 (2) Achieve the regulatory goal in the least restrictive manner.
- 12 (3) Avoid duplicating standards found in state or federal laws.
- 13 (4) Be written for ease of comprehension.
- 14 (5) Have practicable enforcement.

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

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

- 23 (1) A federal or state statute, rule, or regulation.
- 24 (2) A code, manual, or other standard adopted by an agent of the
- 25 United States, a state, or a nationally recognized organization or
- 26 association.
- 27 (3) A manual of the department of local government finance
- 28 adopted in a rule described in IC 6-1.1-31-9.
- 29 (4) The following requirements:
 - 30 (A) The schedule, electronic formatting, and standard data,
 - 31 field, and record coding requirements for:
 - 32 (i) the electronic data file under IC 6-1.1-4-25
 - 33 concerning the parcel characteristics and parcel
 - 34 assessments of all parcels and personal property return
 - 35 characteristics and assessments; and
 - 36 (ii) the electronic data file under IC 36-2-9-20
 - 37 concerning the tax duplicate.
 - 38 (B) The schedule, electronic formatting, and standard data,
 - 39 field, and record coding requirements for data required to
 - 40 be submitted under IC 6-1.1-5.5-3 or IC 6-1.1-11-8.
 - 41 (C) Data export and transmission format requirements for
 - 42 information described in clauses (A) and (B).

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

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

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

11 (1) An Indiana statute or rule.

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

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

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

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

18 (B) publisher after June 30, 2006.

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

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

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

28 (1) adopt under sections 24 through 36 of this chapter **or section**
29 **37.2 or 37.3 of this chapter; and**

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

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

33 (1) either:

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

36 (B) a rulemaking action has been commenced under
37 IC 13-14-9; ~~and or~~

38 (C) **a rulemaking action has been commenced under**
39 **IC 4-22-2.6; and**

40 (2) the rule has not become effective under section 36 of this
41 chapter.

42 (c) Each agency shall maintain a current rulemaking docket that

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- 1 is indexed.
- 2 (d) A current rulemaking docket must list each pending
3 rulemaking action. The docket must state or contain:
- 4 (1) the subject matter of the proposed rule;
 - 5 (2) notices related to the proposed rule, or links to the Indiana
6 Register where these notices may be viewed;
 - 7 (3) how comments may be made;
 - 8 (4) the time within which comments may be made;
 - 9 (5) where comments and the agency's written response to those
10 comments may be inspected;
 - 11 (6) the date, time, and place where a public hearing required
12 under:
 - 13 (A) section 26 of this chapter; or
 - 14 (B) IC 13-14-9;
 - 15 will be held;
 - 16 (7) a description of relevant scientific and technical findings
17 related to the proposed rule, if applicable; and
 - 18 (8) a reasonable estimate of the timetable for action, updated
19 periodically as circumstances change, if necessary.
- 20 (e) The agency shall maintain the rulemaking docket on the
21 agency's ~~Internet web site.~~ **website.** The information must be in an
22 open format that can be easily searched and downloaded. Access to the
23 docket shall, to the extent feasible and permitted by law, provide an
24 opportunity for public comment on the pertinent parts of the
25 rulemaking docket, including relevant scientific and technical findings.
26 Upon request, the agency shall provide a written rulemaking docket.
- 27 **SECTION 12. IC 4-22-2-22.7 IS ADDED TO THE INDIANA**
28 **CODE AS A NEW SECTION TO READ AS FOLLOWS**
29 **[EFFECTIVE JULY 1, 2023]: Sec. 22.7. (a) Before complying with**
30 **section 22.8 of this chapter, an agency shall conduct a regulatory**
31 **analysis for the proposed rule. The regulatory analysis must**
32 **evaluate whether the proposed rule does the following:**
- 33 (1) **Minimizes expenses to:**
 - 34 (A) **regulated entities that are required to comply with**
35 **the rule;**
 - 36 (B) **persons who pay taxes or pay fees for government**
37 **services affected by the rule; and**
 - 38 (C) **consumers of products and services of regulated**
39 **entities affected by the rule.**
 - 40 (2) **Achieves the regulatory goal in the least restrictive**
41 **manner.**
 - 42 (3) **Has benefits that exceed the fiscal and economic costs of**

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- 1 the proposed rule.
- 2 (4) Avoids duplicating and conflicting standards with other
- 3 federal, state, or local laws, rules, regulations, or ordinances.
- 4 (5) Is written for ease of comprehension.
- 5 (6) Has practicable enforcement.
- 6 (b) The office of management and budget shall set standards
- 7 for the criteria, analytical method, treatment technology,
- 8 economic, fiscal, and other background data to be used by an
- 9 agency in the regulatory analysis. The regulatory analysis must be
- 10 submitted in a form that can be easily loaded into commonly used
- 11 business analysis software and published in the Indiana Register
- 12 using the format jointly developed by the publisher, the office of
- 13 management and budget, and the budget agency. The office of
- 14 management and budget may provide more stringent requirements
- 15 for rules with fiscal impacts and costs above a threshold amount
- 16 determined by the office of management and budget. At a
- 17 minimum, the regulatory analysis must include findings and any
- 18 supporting data, studies, or analyses prepared for a rule that
- 19 demonstrate compliance with the following:
- 20 (1) A requirement in IC 4-3-22-13 explaining how the
- 21 proposed rule meets the cost benefit requirements in
- 22 IC 4-3-22-13.
- 23 (2) A requirement in section 19.5 of this chapter to minimize
- 24 the expenses to regulated entities that are required to comply
- 25 with the rule.
- 26 (3) A statement justifying any requirement or cost that is:
- 27 (A) imposed on a regulated entity under the rule; and
- 28 (B) not expressly required by:
- 29 (i) the statute authorizing the agency to adopt the
- 30 rule; or
- 31 (ii) any other state or federal law.
- 32 The statement required under this subdivision must include
- 33 a reference to any data, studies, or analyses relied upon by
- 34 the agency in determining that the imposition of the
- 35 requirement or cost is necessary.
- 36 (4) A requirement in IC 4-22-2.1-5 to prepare a statement
- 37 that describes the annual economic impact of a rule on all
- 38 small businesses after the rule is fully implemented.
- 39 (5) A requirement in IC 4-22-2.6 to conduct a review to
- 40 consider whether there are any alternative methods of
- 41 achieving the purpose of the rule that are less costly or less
- 42 intrusive, or that would otherwise minimize the economic

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impact of the proposed rule on small businesses.
(6) A requirement in IC 13-14-9-3 or IC 13-14-9-4 to publish information concerning the fiscal or economic impact of a rule or alternatives to a rule subject to these provisions.
(7) A requirement in IC 13-14-9-3 or IC 13-14-9-4 to publish information concerning differences between the rule and federal law or the annual fiscal and economic impact of 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.
(8) A requirement under any other law to conduct an analysis of the cost, benefits, economic impact, or fiscal impact of a rule.

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

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

- (1) A general description of the subject matter of the proposed rule.
- (2) The full text of the proposed rule (including a copy of any matter incorporated by reference under section 21 of this chapter) in the form required by the publisher, including citations to any related authorizing and affected Indiana statutes.
- (3) The analysis, including supporting data, prepared under section 22.7 of this chapter.
- (4) Any other information required by the office of management and budget.

(b) The budget agency and the office of management and budget shall expedite the review of the request to adopt a rule. The budget agency and the office of management and budget may do

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the following:

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

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

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

(c) If an agency has requested authorization for more than one (1) rule in the same request, the budget agency and the office of management and budget may make separate determinations with respect to some or all of the rules in the request. Approval of a request shall be treated as a determination that the review conducted and findings made by the agency comply with the requirements of section 22.7 of this chapter and this section.

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

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

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

(b) At least twenty-eight (28) days before an agency notifies the public of the agency's intention to adopt a rule under section 24 of this chapter, the agency shall notify the public of its intention to adopt a rule by publishing a notice of intent to adopt a rule in the Indiana

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1 ~~Register.~~ An agency shall provide notice in the Indiana Register of
 2 the first public comment period required by subsection (a). To
 3 publish notice of the first comment period in the Indiana Register,
 4 the agency must submit the following to the publisher:
 5 (1) The full text of the agency's proposed rule (excluding the
 6 full text of a matter incorporated by reference under section
 7 21 of this chapter). The agency shall submit the rule in the
 8 form required by section 20 of this chapter and with the
 9 documents required by section 21 of this chapter.
 10 (2) The latest version of the regulatory analysis submitted to
 11 the budget agency and the office of management and budget
 12 under section 22.8 of this chapter.
 13 (3) The determination of the budget agency and the office of
 14 management and budget authorizing commencement of the
 15 first and second public comment periods on the proposed
 16 rule.
 17 (4) The notice required under subsection (c).
 18 (c) The ~~publication~~ notice of the first comment period must
 19 include the following:
 20 (1) A general description of the subject matter of the
 21 proposed rule.
 22 (2) An overview of the intent and scope of the proposed rule and
 23 the statutory authority for the rule.
 24 (3) The latest version of the regulatory analysis submitted to
 25 the budget agency and the office of management and budget
 26 under section 22.8 of this chapter, excluding any appendices
 27 containing any data, studies, or analysis referenced in the
 28 regulatory analysis.
 29 (4) Information concerning where, when, and how a person
 30 may submit written comments on the proposed rule,
 31 including contact information concerning the small business
 32 regulatory coordinator required by section 28.1 of this
 33 chapter.
 34 (5) Information concerning where, when, and how a person
 35 may inspect and copy the regulatory analysis, and any data,
 36 studies, or analyses referenced under subdivision (3).
 37 (6) Information concerning where, when, and how a person
 38 may inspect any documents incorporated by reference into
 39 the proposed rule under section 21 of this chapter.
 40 (7) An indication that the notice is for the first of two (2)
 41 thirty (30) day periods in which the public may comment on
 42 the proposed rule.

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

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

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

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

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

27 (1) **The notice of the first comment period.**

28 (2) **The full text of the agency's proposed rule (excluding the**
29 **full text of a matter incorporated by reference under section**
30 **21 of this chapter).**

31 SECTION 15. IC 4-22-2-23.1, AS AMENDED BY P.L.123-2006,
32 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
33 JULY 1, 2023]: Sec. 23.1. (a) This section and section 19(b) of this
34 chapter do not apply to rules adopted under IC 4-22-2-37.1.

35 (b) Before or after an agency notifies the public of its intention to
36 adopt a rule under section 24 of this chapter, **submits a request to the**
37 **budget agency and the office of management and budget under**
38 **section 22.8 of this chapter,** the agency may solicit comments from all
39 or any segment of the public on the need for a rule, the drafting of a
40 rule, or any other subject related to a rulemaking action. The
41 procedures that the agency may use include the holding of conferences
42 and the inviting of written suggestions, facts, arguments, or views. An

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1 agency's failure to consider comments received under this section does
2 not invalidate a rule subsequently adopted.

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

- 8 (1) **one (1) newspaper of general circulation in Marion**
- 9 **County; and**
- 10 **(2) the Indiana Register;**

11 **of the second public comment period required by section 23 of this**
12 **chapter.**

13 (b) The agency shall cause a notice of a public hearing to be
14 published once in one (1) newspaper of general circulation in Marion
15 County, Indiana. To publish the newspaper notice, the agency shall
16 directly contract with the newspaper. **The newspaper notice must**
17 **contain the following information:**

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

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

42 (c) **To publish a notice of the second comment period in the**

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Indiana Register, the agency must submit the following to the publisher:

(1) The agency shall cause a notice of public hearing and The full text of the agency's proposed rule (excluding the full text of a matter incorporated by reference under section 21 of this chapter). ~~to be published once in the Indiana Register. To publish the notice and proposed rule in the Indiana Register; the agency shall submit the text to the publisher in accordance with subsection (g).~~ The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter **(if the agency has not previously provided the publisher with the documents)**. The publisher shall determine the number of copies of the rule and other documents to be submitted under this ~~subsection~~ **subdivision**.

(2) **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 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 under section 23 of this chapter.**

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

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

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

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

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

~~(A) imposed on a regulated entity under 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 under 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

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cost is necessary.
(4) an explanation that:
 (A) the proposed rule; and
 (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

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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.

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

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

- ~~(1) establishing the intended publication date; and~~
- ~~(2) receiving the public hearing information specified in subsection (d) from the agency;~~

the publisher shall 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 section 21 of this chapter).**

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

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- 1 by electronic means:
- 2 (1) the reasons why the rule was not adopted and the expected
- 3 date the rule will be completed; and
- 4 (2) the expected date the rule will be approved or deemed
- 5 approved by the governor or withdrawn under section 41 of this
- 6 chapter.
- 7 (b) If a rule is not approved before the later of:
- 8 (1) one (1) year after the agency publishes notice of ~~intent to~~
- 9 ~~adopt the rule~~ **the first public comment period** under section 23
- 10 of this chapter; or
- 11 (2) the expected date contained in a notice concerning the rule
- 12 that is provided to the publisher under subsection (a);
- 13 a later approval or deemed approval is ineffective, and the rule may
- 14 become effective only through another rulemaking action initiated
- 15 under this chapter.

16 SECTION 18. IC 4-22-2-27 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 27. The individual or
 18 group of individuals who will finally adopt the rule under section 29 of
 19 this chapter shall fully consider **written** comments received **by the**
 20 **agency during each comment period and comments received** at the
 21 public hearing required by section 26 of this chapter and may consider
 22 any other information before adopting the rule. Attendance at the
 23 public hearing or review of a written record or summary of the public
 24 hearing is sufficient to constitute full consideration.

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

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

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

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- 1 (2) "Total estimated economic impact" means the direct annual
- 2 economic impact of a rule on all regulated persons after the rule
- 3 is fully implemented under subsection (g).
- 4 (b) The ombudsman:
- 5 (1) shall review a proposed rule that
- 6 (A) imposes requirements or costs on small businesses (as
- 7 defined in IC 4-22-2.1-4); and
- 8 (B) is referred to the ombudsman by an agency under
- 9 IC 4-22-2.1-5(c); and
- 10 (2) may review a proposed rule that imposes requirements or
- 11 costs on businesses other than small businesses (as defined in
- 12 IC 4-22-2.1-4).

13 After conducting a review under subdivision (1) or (2), the ombudsman
 14 may suggest alternatives to reduce any regulatory burden that the
 15 proposed rule imposes on small businesses or other businesses. The
 16 agency that intends to adopt the proposed rule shall respond in writing
 17 to the ombudsman concerning the ombudsman's comments or
 18 suggested alternatives before adopting the proposed rule under section
 19 29 of this chapter.

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

34 (d) Except as provided in subsection (e), before the adoption of the
 35 rule, and not more than forty-five (45) days after receiving a proposed
 36 rule under subsection (c), the office of management and budget shall
 37 prepare, using the data and assumptions provided by the agency
 38 proposing the rule, along with any other data or information available
 39 to the office of management and budget, a fiscal impact statement
 40 concerning the effect that compliance with the proposed rule will have
 41 on:

- 42 (1) the state; and

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

16 (e) With respect to a proposed rule subject to IC 13-14-9:
 17 (1) the department of environmental management shall give
 18 written notice to the office of management and budget of the
 19 proposed date of preliminary adoption of the proposed rule not
 20 less than sixty-six (66) days before that date; and
 21 (2) the office of management and budget shall prepare the fiscal
 22 impact statement referred to in subsection (d) not later than
 23 twenty-one (21) days before the proposed date of preliminary
 24 adoption of the proposed rule.

25 (f) In determining whether a proposed rule has a total estimated
 26 economic impact greater than five hundred thousand dollars
 27 (\$500,000), the agency proposing the rule shall consider the impact of
 28 the rule on any regulated person that already complies with the
 29 standards imposed by the rule on a voluntary basis.

30 (g) For purposes of this section, a rule is fully implemented after:
 31 (1) the conclusion of any phase-in period during which:
 32 (A) the rule is gradually made to apply to certain regulated
 33 persons; or
 34 (B) the costs of the rule are gradually implemented; and
 35 (2) the rule applies to all regulated persons that will be affected
 36 by the rule.

37 In determining the total estimated economic impact of a proposed rule
 38 under this section, the agency proposing the rule shall consider the
 39 annual economic impact on all regulated persons beginning with the
 40 first twelve (12) month period after the rule is fully implemented. The
 41 agency may use actual or forecasted data and may consider the actual
 42 and anticipated effects of inflation and deflation. The agency shall

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1 describe any assumptions made and any data used in determining the
2 total estimated economic impact of a rule under this section:

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

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

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

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

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

31 (4) a requirement in IC 4-22-2.5-3.1 to conduct a review to
32 consider whether there are any alternative methods of achieving
33 the purpose of the rule that are less costly or less intrusive, or
34 that would otherwise minimize the economic impact of the
35 proposed rule on small businesses;

36 (5) a requirement in IC 13-14-9-3 or IC 13-14-9-4 to publish
37 information concerning the fiscal impact of a rule or alternatives
38 to a rule subject to these provisions; or

39 (6) a requirement under any other law to conduct an analysis of
40 the cost, economic impact, or fiscal impact of a rule;

41 regardless of whether the total estimated economic impact of the
42 proposed rule is more than five hundred thousand dollars (\$500,000);

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1 as soon as practicable after the information is prepared. Information
2 submitted under this subsection must identify the rule to which the
3 information is related by document control number assigned by the
4 publisher.

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

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

11 (2) A rule for which:
12 (A) the notice required by IC 13-14-9-3; or
13 (B) an appropriate later notice for circumstances described
14 in subsection (g);
15 is published by the department of environmental management
16 after June 30, 2006.

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

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

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

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

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

37 (2) in the case of a rule proposed by the department of
38 environmental management or the board (as defined in
39 IC 13-13-8-1), the notice published under IC 13-14-9-3 or the
40 findings published under IC 13-14-9-8(b)(1), whichever applies;
41 must include the name, address, telephone number, and electronic mail
42 address of the small business coordinator for the proposed rule, the

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

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

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

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

19 (3) if applicable, a statement of:

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

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

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

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

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

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1 the information that subsection (f) would otherwise require to be
2 published in the notice under IC 13-14-9-3.

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

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

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

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

13 (4) Any other concerns of small businesses with respect to the
14 rule, including the agency's application or enforcement of the
15 rule in particular situations. However, in the case of a rule
16 adopted under IC 13-14-9, the coordinator assigned to the rule
17 may refer a small business with concerns about the application
18 or enforcement of the rule in a particular situation to the
19 ombudsman designated under IC 13-28-3-2 or, if applicable,
20 under IC 13-28-5-2(3).

21 (i) The coordinator assigned to a rule under subsection (e) shall
22 provide guidance under this section in response to questions and
23 concerns expressed by small businesses affected by the rule. The
24 coordinator may also issue general guidelines or informational
25 pamphlets to assist small businesses in complying with the rule. Any
26 guidelines or informational pamphlets issued under this subsection
27 shall be made available:

28 (1) for public inspection and copying at the offices of the agency
29 under IC 5-14-3; and

30 (2) electronically through electronic gateway access.

31 (j) The coordinator assigned to a rule under subsection (e) shall
32 keep a record of all comments, questions, and complaints received
33 from small businesses with respect to the rule. The coordinator shall
34 deliver the record, along with any accompanying documents submitted
35 by small businesses, to the director:

36 (1) not later than ten (10) days after the date on which the rule is
37 submitted to the publisher under section 35 of this chapter; and

38 (2) before July 15 of each year during which the rule remains in
39 effect.

40 The coordinator and the director shall keep confidential any
41 information concerning a small business to the extent that the
42 information is exempt from public disclosure under IC 5-14-3-4.

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- 1 (k) Not later than November 1 of each year, the director shall:
- 2 (1) compile the records received from all of the agency's
- 3 coordinators under subsection (j);
- 4 (2) prepare a report that sets forth:
- 5 (A) the number of comments, complaints, and questions
- 6 received by the agency from small businesses during the
- 7 most recent state fiscal year, categorized by the subject
- 8 matter of the rules involved;
- 9 (B) the number of complaints or questions reported under
- 10 clause (A) that were resolved to the satisfaction of the
- 11 agency and the small businesses involved;
- 12 (C) the total number of staff serving as coordinators under
- 13 this section during the most recent state fiscal year;
- 14 (D) the agency's costs in complying with this section during
- 15 the most recent state fiscal year; and
- 16 (E) the projected budget required by the agency to comply
- 17 with this section during the current state fiscal year; and
- 18 (3) deliver the report to the legislative council in an electronic
- 19 format under IC 5-14-6 and to the small business ombudsman
- 20 designated under IC 5-28-17-6.

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

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

- 28 (1) adopt a rule that is identical to a proposed rule published in
- 29 the Indiana Register under section 24 of this chapter;
- 30 (2) subject to subsection (c), adopt a rule that consolidates part
- 31 or all of two (2) or more proposed rules published in the Indiana
- 32 Register under section 24 of this chapter and considered under
- 33 section 27 of this chapter;
- 34 (3) subject to subsection (c), adopt part of one (1) or more
- 35 proposed rules described in subdivision (2) in two (2) or more
- 36 separate adoption actions; or
- 37 (4) subject to subsection (c), adopt a revised version of a
- 38 proposed rule published under section 24 of this chapter and
- 39 include provisions that did not appear in the published version,
- 40 including any provisions recommended by the small business
- 41 ombudsman under IC 4-22-2.1-6(a), if applicable.
- 42 (c) An agency may not adopt a rule that substantially differs from

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1 the version or versions of the proposed rule or rules published in the
 2 Indiana Register under section 24 of this chapter, unless it is a logical
 3 outgrowth of any proposed rule as supported by any written comments
 4 submitted:

- 5 (1) during the public comment ~~period;~~ **periods;** or
- 6 (2) by the small business ombudsman under IC 4-22-2.1-6(a), if
 7 applicable.

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

- 15 (1) The rule in the form required by section 20 of this chapter.
- 16 (2) The documents required by section 21 of this chapter.
- 17 (3) Written authorization to proceed issued by the publisher
 18 under ~~section 24(g)~~ **sections 23(d) and 24(f)** of this chapter.
- 19 (4) Any other documents specified by the attorney general.

20 The attorney general may require the agency to submit any supporting
 21 documentation that the attorney general considers necessary for the
 22 attorney general's review under section 32 of this chapter. The agency
 23 may submit any additional supporting documentation the agency
 24 considers necessary.

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

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

32 **The amendments to this section made in the 2023 regular session**
 33 **of the general assembly apply to emergency rules that are accepted**
 34 **for filing by the publisher of the Indiana Register after June 30,**
 35 **2023, regardless of whether the adopting agency initiated official**
 36 **action to adopt the emergency rule before July 1, 2023. An action**
 37 **taken before July 1, 2023, in conformity with this section (as**
 38 **effective after June 30, 2023) is validated to the same extent as if**
 39 **the action was taken after June 30, 2023.**

40 (b) **An agency may adopt a rule** ~~may be adopted under on a~~
 41 **subject for which the agency has rulemaking authority using the**
 42 **procedures in this section if a statute delegating authority to an agency**

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1 to adopt rules authorizes adoption of such a rule:

2 (1) under this section; or

3 (2) in the manner provided by this section.

4 **the governor finds that the agency proposing to adopt the rule has**
 5 **demonstrated to the satisfaction of the governor that use of**
 6 **emergency rulemaking procedures under this section is necessary**
 7 **to avoid:**

8 (1) **an imminent and substantial peril to public health, safety,**
 9 **or welfare;**

10 (2) **an imminent and material loss of federal funds for an**
 11 **agency program;**

12 (3) **an imminent and material deficit; or**

13 (4) **an imminent and substantial violation of a state or federal**
 14 **law or the terms of a federal agreement or program.**

15 **To obtain a determination from the governor, an agency must**
 16 **submit to the governor the text of the proposed emergency rule, a**
 17 **statement justifying the need for emergency rulemaking**
 18 **procedures, and any additional information required by the**
 19 **governor in the form and in the manner required by the governor.**
 20 **A notice of determination by the governor shall include findings**
 21 **that explain the basis for the determination. The notice of**
 22 **determination shall be provided to the agency in an electronic**
 23 **format. Approval of a request shall be treated as a determination**
 24 **that the rule meets the criteria in this subsection.**

25 (c) ~~After an agency adopts a rule under this section, the governor~~
 26 **approves emergency rulemaking procedures for a rule, the agency**
 27 **shall submit the rule to the publisher for the assignment of obtain a**
 28 **document control number The agency shall submit the rule in the form**
 29 **required by section 20 of this chapter and with the documents required**
 30 **by section 21 of this chapter: from the publisher. The publisher shall**
 31 **determine the documents and the format of the rule and other**
 32 **documents to that must be submitted under this subsection: to the**
 33 **publisher to obtain a document control number.**

34 (d) **After the document control number has been assigned and the**
 35 **agency adopts the rule, the agency shall submit the rule following to**
 36 **the publisher for filing:**

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

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

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- (3) **The approval of the governor to use emergency rulemaking procedures for the rule.**
- (4) The documents required by section 21 of this chapter.
The publisher shall determine the format of the **emergency** rule and other documents to be submitted under this subsection. **The substantive text of the adopted emergency rule must be substantially similar to the text of the proposed emergency rule submitted to the governor. An emergency rule may suspend but not repeal a rule approved by the governor under section 34 of this chapter.**
- (e) Subject to **subsection (d) and** section 39 of this chapter, the publisher shall:
 - (1) accept the rule for filing; **and**
 - (2) electronically record the date and time that the rule is accepted; **and**
 - (3) **publish the text of the adopted emergency rule and the governor's approval in the Indiana Register.**
- (f) ~~A~~ **An emergency** 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 **emergency** rule.
 - (2) The date and time that the **emergency** rule is accepted for filing under subsection (e).
 - (3) The effective date stated by the adopting agency in the **emergency** rule.
 - (4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the **emergency** rule.
 - (5) The statutory effective date for an emergency rule set forth in the statute authorizing the agency to adopt emergency rules: **law.**
- (g) Unless otherwise provided by the statute authorizing adoption of the rule:
 - (1) a rule adopted under this section expires not later than ninety (90) days after the rule is accepted for filing under subsection (e);
 - (2) a rule adopted under this section may be extended by adopting another rule under this section, but only for one (1) extension period; and
 - (3) for a rule adopted under this section to be effective after one (1) extension period, the rule must be adopted under:
 - (A) sections 24 through 36 of this chapter; or

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1 (B) IC 13-14-9;
2 as applicable.

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

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

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

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

32 (i) The attorney general may file a written objection to an
33 emergency rule under subsection (h) only if the attorney general
34 determines that the emergency rule has been adopted:

- 35 (1) without statutory authority; or
36 (2) without complying with this section.

37 A notice of objection to an emergency rule by the attorney general
38 must include findings that explain the basis for the determination.
39 The notice of objection shall be provided to the agency in an
40 electronic format.

41 SECTION 25. IC 4-22-2-37.2 IS ADDED TO THE INDIANA
42 CODE AS A NEW SECTION TO READ AS FOLLOWS

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1 [EFFECTIVE JULY 1, 2023]: Sec. 37.2. (a) The following do not
2 apply to a rule adopted under this section:

3 (1) Sections 23 through 27 of this chapter or IC 13-14-9 (as
4 applicable).

5 (2) Sections 28 through 36 of this chapter.

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

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

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

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

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

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

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

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

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

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

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

The statement required under 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 and where and how a person may inspect and copy or electronically download the data, studies, or analyses.

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

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

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1 (e) Before adopting the interim rule, the agency shall prepare
2 a written response to comments received by the agency, including
3 the reasons for rejecting any recommendations made in the
4 comments.

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

- 8 (1) adopt a rule that is identical to a proposed interim rule
9 published in the Indiana Register under this section; or
- 10 (2) adopt a revised version of a proposed interim rule
11 published under this section and include provisions that did
12 not appear in the initially published proposed version.

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

18 (g) After the agency adopts the interim rule, the agency shall
19 submit the following to the publisher for filing:

- 20 (1) The text of the adopted interim rule. The agency shall
21 submit the interim rule in the form required by section 20 of
22 this chapter.
- 23 (2) A summary of the comments received by the agency
24 during the comment period and the agency's response to the
25 comments.
- 26 (3) A signature page that indicates that the agency has
27 adopted the interim rule in conformity with all procedures
28 required by law.
- 29 (4) The approval of the governor to use interim rulemaking
30 procedures for the rule.
- 31 (5) The documents required by section 21 of this chapter.

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

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

- 38 (1) accept the rule for filing;
- 39 (2) electronically record the date and time that the rule is
40 accepted; and
- 41 (3) publish the text of the adopted interim rule and the
42 governor's approval in the Indiana Register.

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

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

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

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

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1 **electronic format.**

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

6 (1) Sections 23 through 27 of this chapter or IC 13-14-9 (as
7 applicable).

8 (2) Sections 28 through 36 of this chapter.

9 (b) An agency may adopt a rule described in IC 4-22-2.3 with
10 a single comment period of at least thirty (30) days in length using
11 the procedures in this section if the governor finds that the agency
12 proposing to adopt the rule has demonstrated to the satisfaction of
13 the governor that use of expedited rulemaking procedures under
14 this section is appropriate for a rule described in IC 4-22-2.3. To
15 obtain a determination from the governor, an agency must submit
16 to the governor the text of the proposed expedited rule, a statement
17 justifying the need for expedited rulemaking procedures, and any
18 additional information required by the governor in the form and
19 in the manner required by the governor. A notice of determination
20 by the governor shall include findings that explain the basis for the
21 determination. The notice of determination shall be provided to the
22 agency in an electronic format. Approval of a request shall be
23 treated as a determination that the rule meets the criteria in this
24 subsection.

25 (c) An agency shall notify the public of its intention to adopt a
26 rule by complying with the publication requirements in this
27 section. The agency shall cause a notice of a public comment period
28 and the full text of the agency's proposed expedited rule (excluding
29 the full text of a matter incorporated by reference under section 21
30 of this chapter) to be published once in the Indiana Register. The
31 publisher shall review materials submitted under this section and
32 determine the date that the publisher intends to include the
33 material in the Indiana Register. After establishing the intended
34 publication date and receiving the public comment period
35 information from the agency, the publisher shall provide a written
36 or an electronic mail authorization to proceed to the agency.

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

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

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

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

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

The statement required under 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 and where and how a person may inspect and copy or electronically download the data, studies, or analysis.

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

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

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

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

- (1) adopt a rule that is identical to a proposed expedited rule published in the Indiana Register under this section; or
- (2) adopt a revised version of a proposed expedited rule published under this section and include provisions that did not appear in the published version.

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

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

- (1) The text of the adopted expedited rule. The agency shall submit the expedited rule in the form required by section 20

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

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

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

12 (1) without statutory authority; or

13 (2) without complying with this section.

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

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

22 (1) A rule that brings another rule into conformity with section
 23 20 of this chapter.

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

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

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

36 (c) Notwithstanding any other statute, an agency may adopt a rule
 37 described by subsection (a) without complying with any statutory
 38 notice, hearing, adoption, or approval requirement. In addition, the
 39 governor may adopt a rule described in subsection (a) for an agency
 40 without the agency's consent or action.

41 (d) A rule described in subsection (a) shall be submitted to the
 42 publisher for the assignment of a document control number. The

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1 agency (or the governor, for the agency) shall submit the rule in the
2 form required by section 20 of this chapter and with the documents
3 required by section 21 of this chapter. The publisher shall determine
4 the number of copies of the rule and other documents to be submitted
5 under this subsection.

6 (e) After a document control number is assigned, the agency (or
7 the governor, for the agency) shall submit the rule to the publisher for
8 filing. The agency (or the governor, for the agency) shall submit the
9 rule in the form required by section 20 of this chapter and with the
10 documents required by section 21 of this chapter. The publisher shall
11 determine the format of the rule and other documents to be submitted
12 under this subsection.

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

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

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

- 18 (1) The date that the rule being corrected by a rule adopted under
19 this section becomes effective.
- 20 (2) The date that is forty-five (45) days from the date and time
21 that the rule adopted under this section is accepted for filing
22 under subsection (f).

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

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

- 33 (1) The following documents are submitted to allow the
34 publisher to comply with IC 4-22-7-5:
35 (A) One (1) electronic copy of the rule.
36 (B) One (1) copy of any matters incorporated by reference
37 under section 21 of this chapter in the format specified by
38 the publisher.
39 (C) One (1) copy of any supporting documentation
40 submitted under section 31 of this chapter in the format
41 specified by the publisher.
42 (2) Each submitted copy includes a reference to the document

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1 control number assigned to the rule by the publisher.
 2 (3) Each submitted copy indicates that the agency has conducted
 3 its rulemaking action in conformity with all procedures required
 4 by law. However, if section 31 of this chapter applies to the rule,
 5 the publisher shall rely on the approval of the attorney general as
 6 the basis for determining that the agency has complied with all
 7 procedures required before the date of the approval.
 8 (b) If a rule includes a statement that the rule is not effective until:
 9 (1) an agency has complied with requirements established by the
 10 federal or state government;
 11 (2) a specific period of time has elapsed; or
 12 (3) a date has occurred;
 13 the agency has complied with subsection (a)(3) even if the described
 14 event or time has not occurred before the publisher reviews the rule
 15 under this section.
 16 (c) The publisher shall take no more than three (3) business days
 17 to complete the review of a rule under this section.
 18 SECTION 29. IC 4-22-2-40, AS AMENDED BY P.L.53-2014,
 19 SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2023]: Sec. 40. (a) At any time before a rule is accepted for
 21 filing by the publisher under section 35, 37.1, **37.2, 37.3**, or 38 of this
 22 chapter, the agency that adopted the rule may recall it. A rule may be
 23 recalled regardless of whether:
 24 (1) the rule has been disapproved by the attorney general under
 25 section 32 of this chapter; or
 26 (2) the rule has been disapproved by the governor under section
 27 34 of this chapter.
 28 (b) Sections 24 through 38 of this chapter do not apply to a recall
 29 action under this section. However, the agency shall distribute a notice
 30 of its recall action to the publisher for publication in the Indiana
 31 Register. Sections 24 and 26 of this chapter do not apply to a
 32 readoption action under subsection (c).
 33 (c) After an agency recalls a rule, the agency may reconsider its
 34 adoption action and adopt an identical rule or a revised rule. However,
 35 if sections 24 through 36 of this chapter apply to the recalled rule, the
 36 readopted rule must comply with the requirements under section 29 of
 37 this chapter.
 38 (d) The recall of a rule under this section voids any approval given
 39 after the rule was adopted and before the rule was recalled.
 40 (e) If a rule is:
 41 (1) subject to sections 31 and 33 of this chapter;
 42 (2) recalled under subsection (a); and

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1 (3) readopted under subsection (c);
 2 the agency shall resubmit the readopted version of the recalled rule to
 3 the attorney general and the governor for approval. The attorney
 4 general and the governor have the full statutory period to approve or
 5 disapprove the readopted rule. ~~If the recalled rule was submitted to the~~
 6 ~~office of management and budget under section 28 of this chapter;~~ The
 7 agency shall resubmit the readopted version of a recalled rule to the
 8 office of management and budget with sufficient information for the
 9 office of management and budget to evaluate whether ~~its~~ **the initial**
 10 **fiscal impact statement regulatory analysis submitted to the office**
 11 **of management and budget** under section ~~28~~ **22.8** of this chapter
 12 needs to be revised. ~~The office of management and budget shall revise~~
 13 ~~a fiscal impact statement under section 28 of this chapter~~ If the fiscal
 14 impact of the readopted rule is substantially different from the recalled
 15 rule, **the agency shall submit the revised regulatory analysis to the**
 16 **publisher for publication in the Indiana Register with the**
 17 **document control number assigned by the publisher to the rule.**
 18 The agency also shall comply with any other applicable approval
 19 requirement provided by statute.

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

23 SECTION 30. IC 4-22-2-41, AS AMENDED BY P.L.123-2006,
 24 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2023]: Sec. 41. (a) At any time before a rule is accepted by the
 26 publisher for filing under section 35, 37.1, **37.2, 37.3**, or 38 of this
 27 chapter, the agency that adopted the rule may withdraw it.

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

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

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

42 SECTION 32. IC 4-22-2.1-5, AS AMENDED BY P.L.109-2015,

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

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

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

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

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

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

23 (B) not expressly required by:

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

26 (ii) any other state or federal law.

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

31 (5) A regulatory flexibility analysis that considers any less
 32 intrusive or less costly alternative methods of achieving the
 33 purpose of the proposed rule. The analysis under this subdivision
 34 must consider the following methods of minimizing the
 35 economic impact of the proposed rule on small businesses:

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

38 (B) The establishment of less stringent schedules or
 39 deadlines for compliance or reporting requirements for
 40 small businesses.

41 (C) The consolidation or simplification of compliance or
 42 reporting requirements for small businesses.

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

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

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

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

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

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

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

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

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

28 (c) The agency shall:

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

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

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

40 SECTION 34. IC 4-22-2.3 IS ADDED TO THE INDIANA CODE
41 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 2023]:

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1 Chapter 2.3. Transitional Provisions; Exceptions to
2 Rulemaking Procedures

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

12 (1) October 1, 2023; or

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

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

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

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

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

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

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

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

42 Sec. 2. Before an emergency rule adopted under IC 4-22-2-37.1

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1 (as effective after June 30, 2023) expires, the governor by executive
 2 order may authorize the extension of the emergency rule under the
 3 expedited procedures in IC 4-22-2-37.3 if the governor determines
 4 and finds in the executive order that the emergency circumstances
 5 justifying the emergency rule continue to exist. A rule adopted
 6 under the authority of an extension under this section, expires not
 7 later than June 30 of the year following the year in which the rule
 8 is accepted for filing by the publisher of the Indiana Register.

9 **Sec. 3.** The office of the secretary of family and social services
 10 may adopt rules under IC 4-22-2-37.3 to implement IC 12-13-16-13
 11 (211 dialing code services). The rule expires not later than one (1)
 12 year after the adopted rule is accepted for filing under
 13 IC 4-22-2-37.3. An expedited rule described in this section may not
 14 be continued in another expedited rule after the expiration of the
 15 initial expedited rule.

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

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

38 **Sec. 6.** The Indiana education employment relations board
 39 may adopt rules under IC 4-22-2-37.3 to implement IC 20-29-6-6.1
 40 (review of collective bargaining agreement). The rule expires not
 41 later than one (1) year after the adopted rule is accepted for filing
 42 by the publisher of the Indiana Register. An expedited rule

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1 described in this section may not be continued in another expedited
2 rule after the expiration of the initial expedited rule.

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

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

11 (1) sixty (60) days before January 1 of each odd-numbered
12 year in which dollar amounts under IC 24-4.5 (Uniform
13 Consumer Credit Code) are to change, the changes in dollar
14 amounts required by IC 24-4.5-1-106(2); and

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

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

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

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

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

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

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

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

13 (2) has been scheduled, emergency scheduled, or
 14 criminalized by another state; or

15 (3) has:

16 (A) a high potential for abuse; and

17 (B) no accepted medical use in treatment in the United
 18 States or lacks accepted safety for use in treatment
 19 under medical supervision.

20 In making a determination, the Indiana board of pharmacy shall
 21 consider the factors described in IC 25-26-13-4.1. Notwithstanding
 22 IC 4-22-2-37.3, the rule becomes effective when the adopted rule is
 23 published in the Indiana Register. The rule expires not later than
 24 June 30 of the year following the year in which the rule is accepted
 25 for filing by the publisher of the Indiana Register. An expedited
 26 rule described in this section may not be continued in another
 27 expedited rule after the expiration of the initial expedited rule.

28 SECTION 35. IC 4-22-2.5 IS REPEALED [EFFECTIVE JULY 1,
 29 2023]. (Expiration and Readoption of Administrative Rules).

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

33 **Chapter 2.6. Expiration and Readoption of Administrative**
 34 **Rules**

35 **Sec. 1. (a) Except as provided in this section and section 10 of**
 36 **this chapter, a rule expires January 1 of the fifth year after the**
 37 **year in which the rule takes effect, unless the rule expires or is**
 38 **repealed on an earlier date. Except for an amendment made under**
 39 **IC 4-22-2-38, the expiration date of a rule under this section is**
 40 **extended each time that a rule amending or readopting an**
 41 **unexpired rule takes effect. The rule, as amended or readopted,**
 42 **expires on January 1 of the fifth year after the year in which the**

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1 amendment or readoption takes effect.

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

3 (1) in calendar year 2017, the rule expires not later than
4 January 1, 2024;

5 (2) in calendar year 2018, the rule expires not later than
6 January 1, 2025;

7 (3) in calendar year 2019, the rule expires not later than
8 January 1, 2026; or

9 (4) in calendar year 2020, the rule expires not later than
10 January 1, 2027.

11 (c) If the latest version of a rule became effective before
12 January 1, 2017, and:

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

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

17 (3) the rule was adopted by an agency not described in
18 subdivision (1) or (2), the rule expires not later than January
19 1, 2027.

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

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

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

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

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

36 **Sec. 3.** (a) Except as provided in subsection (b), if an agency
37 intends to readopt a rule, the agency shall, not later than January
38 1 of the fourth year after the year in which the rule takes effect,
39 provide an initial notice of the intended readoption in an electronic
40 format designated by the publisher to legislators and legislative
41 committees in the manner and on the schedule specified by the
42 legislative council or the personnel subcommittee of the legislative

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1 council acting for the legislative council.

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

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

8 (1) Minimize expenses to:

9 (A) regulated entities that are required to comply with
10 the rule;

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

13 (C) consumers of products and services of regulated
14 entities affected by the rule.

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

17 (3) Have benefits that exceed the fiscal and economic costs of
18 the rule.

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

21 (5) Be written for ease of comprehension.

22 (6) Have practicable enforcement.

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

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

38 (2) The complexity of the rule, including any difficulties
39 encountered by:

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

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

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

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responses, may do the following:

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

(2) Readopt one (1) or more rules within the scope of the notice of proposed re adoption without change.

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

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

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

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

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

- (1) The date that is thirty (30) days from the date and time that the rule was accepted for filing under section 7 of this chapter.
- (2) The effective date stated by the agency in the rule.
- (3) The date of compliance with every requirement established by law as a prerequisite to the re adoption or effectiveness of the rule.

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

5 **Sec. 10. If a rule is not readopted and the governor finds that**
6 **the failure to readopt the rule causes an emergency to exist, the**
7 **governor may, by executive order issued before the rule's**
8 **expiration date, postpone the expiration date of the rule until a**
9 **date that is not later than one (1) year after the date specified in**
10 **section 1 of this chapter.**

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

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

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

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

- 33 (b) Rules adopted under this chapter must:
- 34 (1) include protections for the rights, safety, and welfare of
- 35 individuals with special needs receiving care from a caretaker
- 36 under this chapter, including reasonable monitoring and
- 37 reporting requirements;
- 38 (2) serve distinct populations, including:
 - 39 (A) the aged;
 - 40 (B) persons with developmental disabilities; and
 - 41 (C) persons with physical disabilities;
- 42 in a manner that recognizes, and appropriately responds to, the

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1 particular needs of the population;
 2 (3) not create barriers to the availability of home and community
 3 based services under IC 12-10-10 and IC 12-10-11.5 by
 4 imposing costly or unduly burdensome requirements on
 5 caretakers or other service providers, including:
 6 (A) requirements for proof of financial responsibility; and
 7 (B) monitoring, enforcement, reporting, or other
 8 administrative requirements; and
 9 (4) otherwise comply with IC 12-10-10, IC 12-10-11.5, and this
 10 chapter.

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

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

- 23 (1) continuum of care providers providing care under this
- 24 chapter;
- 25 (2) individuals receiving care under this chapter;
- 26 (3) area agencies on aging;
- 27 (4) consumers and providers of home and community based
- 28 services under IC 12-10-10 and IC 12-10-11.5; and
- 29 (5) any other agency, volunteer group, faith based group, or
- 30 individual that the division considers appropriate;

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

- 33 (b) Rules adopted under this chapter must:
- 34 (1) include protections for the rights, safety, and welfare of
- 35 individuals receiving care under this chapter;
- 36 (2) serve distinct populations, including:
- 37 (A) the aged;
- 38 (B) persons with developmental disabilities; and
- 39 (C) persons with physical disabilities;

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

- 42 (3) not create barriers to the availability of home and community

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1 based services under IC 12-10-10 and IC 12-10-11.5 by
 2 imposing costly or unduly burdensome requirements on
 3 continuum of care providers or other service providers,
 4 including:
 5 (A) requirements for proof of financial responsibility; and
 6 (B) monitoring, enforcement, reporting, or other
 7 administrative requirements; and
 8 (4) otherwise comply with IC 12-10-10, IC 12-10-11.5, and this
 9 chapter.

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

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

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

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

26 **(c) This chapter (as effective January 1, 2023) continues to**
 27 **apply after June 30, 2023, to a rulemaking action that is**
 28 **commenced under this chapter before July 1, 2023.**

29 SECTION 40. IC 13-14-9-3, AS AMENDED BY P.L.100-2006,
 30 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2023]: Sec. 3. (a) ~~Except as provided in subsection (b);~~ The
 32 department shall provide notice in the Indiana Register of the first
 33 public comment period required by section 2 of this chapter.

34 **(b) To publish notice of the first public comment period in the**
 35 **Indiana Register, the agency must submit the following to the**
 36 **publisher:**

- 37 **(1) The full text of the agency's proposed rule (excluding the**
 38 **full text of a matter incorporated by reference under**
 39 **IC 4-22-2-21). The agency shall submit the rule in the form**
 40 **required by IC 4-22-2-20 and with the documents required**
 41 **by IC 4-22-2-21.**
- 42 **(2) The latest version of the regulatory analysis (including**

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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, <

> (3) The determination of the budget agency and the office of management and budget authorizing commencement of the first and second public comment periods on the proposed rule under IC 4-22-2-22.8.

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

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

(1) Identify the authority under which the proposed rule is to be adopted.

(2) Describe the subject matter and the basic purpose of the proposed rule. The description required by this subdivision must:

(A) list all alternatives being considered by the department at the time of the notice;

(B) state whether each alternative listed under clause (A) creates:

(i) a restriction or requirement more stringent than a restriction or requirement imposed under federal law; or

(ii) a restriction or requirement in a subject area in which federal law does not impose restrictions or requirements;

(C) state the extent to which each alternative listed under clause (A) differs from federal law;

(D) include any information known to the department about the potential fiscal impact of each alternative under clause (A) that creates:

(i) a restriction or requirement more stringent than a restriction or requirement imposed under federal law; or

(ii) a restriction or requirement in a subject area in which federal law does not impose restrictions or requirements; and

(E) set forth the basis for each alternative listed under clause (A).

(3) Describe the relevant statutory or regulatory requirements or restrictions relating to the subject matter of the proposed rule that exist before the adoption of the proposed rule.

(4) Request the submission of alternative ways to achieve the purpose of the proposed rule.

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- 1 (5) Request the submission of comments, including suggestions
- 2 of specific language for the proposed rule.
- 3 (6) Include a detailed statement of the issue to be addressed by
- 4 adoption of the proposed rule.
- 5 **(7) Include the latest version of the regulatory analysis**
- 6 **(excluding any appendices containing any data, studies, or**
- 7 **analysis referenced in the regulatory analysis) submitted to**
- 8 **the budget agency and the office of management and budget**
- 9 **under IC 4-22-2-22.8.**
- 10 **(8) Include information concerning where, when, and how a**
- 11 **person may submit written comments on the proposed rule,**
- 12 **including contact information concerning the small business**
- 13 **regulatory coordinator required by IC 4-22-2-28.1.**
- 14 **(9) Include information concerning where, when, and how a**
- 15 **person may inspect and copy any data, studies, or analyses**
- 16 **referenced in a regulatory analysis under subdivision (7).**
- 17 **(10) Include information concerning where, when, and how**
- 18 **a person may inspect any documents incorporated by**
- 19 **reference into the proposed rule under IC 4-22-2-21.**
- 20 **(11) Include an indication that the notice is for the first of**
- 21 **two (2) thirty (30) day periods in which the public may**
- 22 **comment on the proposed rule.**
- 23 **Inadequacy or insufficiency of the published description or**
- 24 **regulatory analysis does not invalidate a rulemaking action.**
- 25 (b) (d) This section does not apply to rules adopted under
- 26 IC 13-18-22-2, IC 13-18-22-3, or IC 13-18-22-4.
- 27 (c) (e) The notice required under subsection (a) shall be published
- 28 electronically in the Indiana Register under procedures established by
- 29 the publisher. The publisher shall review materials submitted under
- 30 this section and determine the date that the publisher intends to
- 31 publish the text of the proposed rule and the notice in the Indiana
- 32 Register. If the submitted material complies with this section, the
- 33 publisher shall establish the intended publication date, assign a
- 34 document control number to the proposed rule, and provide a
- 35 written or an electronic mail authorization to proceed to the
- 36 agency. The publisher shall publish the following in the Indiana
- 37 Register on the intended publication date:
- 38 (1) The notice of the first comment period.
- 39 (2) The full text of the agency's proposed rule (excluding the
- 40 full text of a matter incorporated by reference under
- 41 IC 4-22-2-21).
- 42 SECTION 41. IC 13-14-9-4, AS AMENDED BY P.L.218-2016,

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SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4. (a) The department shall provide notice in the Indiana Register of the second public comment period required by section 2 of this chapter.

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

(1) The full text of the agency's proposed rule (excluding the full text of a matter incorporated by reference under IC 4-22-2-21). The agency shall submit the rule in the form required by IC 4-22-2-20 and with the documents required by IC 4-22-2-21, if these documents have not already been submitted to the publisher.

(2) 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 (including 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.

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

- (c) A notice provided under this section must do the following:**
 - ~~(1)~~ **(1) Contain the full text of the proposed rule, to the extent required under IC 4-22-2-24(c).**
 - ~~(2)~~ **(1) Contain a summary of the response of the department to written comments submitted under section 3 of this chapter during the first public comment period.**
 - ~~(3)~~ **(2) Request the submission of comments, including suggestions of specific amendments to the language contained in the proposed rule and indicate 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 IC 4-22-2-28.1.**
 - ~~(4)~~ **(3) Contain the full text of the commissioner's written findings under section 7 of this chapter, if applicable. Include a statement indicating the date, time, and place at which the public hearing on the proposed rule will be convened.**
 - ~~(5)~~ **(4) Identify each element of the proposed rule that imposes a restriction or requirement on persons to whom the proposed**

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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

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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 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

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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).

~~(c)~~ **(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 (c) (e) do~~ does not prohibit or restrict the commissioner, the department, or the board from:

- (1) adopting emergency rules under IC 4-22-2-37.1;
- (2) taking emergency action under IC 13-14-10; or
- (3) temporarily:

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

in response to an emergency situation.

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

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

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

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

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

(2) for which the commissioner has made a determination and prepared written findings under section 7 or 8 of this chapter;

a board may not adopt a rule under this chapter until the board has conducted a third public comment period that is at least ~~twenty-one~~

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1 ~~(21)~~ **thirty (30)** days in length.

2 (b) The department shall publish notice of a third public comment

3 period with the

4 ~~(1)~~ **text;**

5 ~~(2)~~ **summary; and**

6 ~~(3)~~ **fiscal analysis;**

7 **information that are is** required to be published in the Indiana Register

8 under section 5(a)(2) of this chapter.

9 (c) ~~The notice of a third public comment period that must be~~

10 ~~published in the Indiana Register under subsection (b) must request the~~

11 ~~submission of comments; including suggestions of specific~~

12 ~~amendments; that concern only the portion of the preliminarily adopted~~

13 ~~rule that is substantively different from the language contained in the~~

14 ~~proposed rule published in a second notice under section 4 of this~~

15 ~~chapter.~~

16 SECTION 44. IC 13-14-9-5, AS AMENDED BY P.L.123-2006,

17 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

18 JULY 1, 2023]: Sec. 5. (a) A board may not adopt a rule until all of the

19 following occur:

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

21 (2) The department, after approval of the proposed rule by the

22 board under subsection (c), publishes the ~~following~~

23 **information** in the Indiana Register as ~~provided in~~

24 ~~IC 4-22-2-24(c):~~

25 (A) ~~The full text of the proposed rule; including any~~

26 ~~amendments arising from the comments received before or~~

27 ~~during the meeting held under subdivision (1):~~

28 (B) ~~A summary of the response of the department to all~~

29 ~~comments received at the meeting held under subdivision~~

30 ~~(1):~~

31 (C) ~~For a proposed rule with an estimated economic impact~~

32 ~~on regulated entities that is greater than five hundred~~

33 ~~thousand dollars (\$500,000); a copy of the office of~~

34 ~~management and budget fiscal analysis required under~~

35 ~~IC 4-22-2-28: required by section 4 of this chapter.~~

36 **However, a notice of a third public comment period**

37 **under section 4.5 of this chapter must request the**

38 **submission of comments, including suggestions of**

39 **specific amendments, that concern only the portion of**

40 **the preliminarily adopted rule that is substantively**

41 **different from the language contained in the proposed**

42 **rule published in a second notice under section 4 of this**

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(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:
 - (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;

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

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

~~SECTION 49. IC 13-19-3-3, AS AMENDED BY P.L.120-2022, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE~~

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1 ~~UPON PASSAGE]~~: Sec. 3. (a) ~~As used in this section and section 3.1~~
 2 ~~of this chapter, "coal combustion residuals" means fly ash, bottom ash,~~
 3 ~~boiler slag, and flue gas desulfurization materials generated from~~
 4 ~~burning coal for the purpose of generating electricity by electric~~
 5 ~~utilities and independent power producers.~~

6 ~~— (b) As used in **The following definitions apply throughout** this~~
 7 ~~section:~~

8 ~~— (1) "Federal CCR rule" refers to 40 CFR 257, Subpart D, the~~
 9 ~~federal standards for the disposal of coal combustion residuals~~
 10 ~~in landfills and surface impoundments.~~

11 ~~— (2) **"Legacy generation resource" means an electric**~~
 12 ~~**generating facility that is directly or indirectly owned by a**~~
 13 ~~**corporation that was originally formed for the purpose of**~~
 14 ~~**providing power to the federal government for use in the**~~
 15 ~~**nation's defense or in furtherance of national interests. The**~~
 16 ~~**term includes the Ohio Valley Electric Corporation.**~~

17 ~~— (c) The board may **shall** adopt rules under section 1(a)(1) of this~~
 18 ~~chapter **concerning coal combustion residuals. The rules adopted**~~
 19 ~~**under this subsection:**~~

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

24 ~~— (2) **shall not impose a restriction or requirement that is more**~~
 25 ~~**stringent than the corresponding restriction or requirement**~~
 26 ~~**imposed under the federal CCR rule; and**~~

27 ~~— (3) **shall not impose a restriction or requirement that is not**~~
 28 ~~**imposed by the federal CCR rule.**~~

29 ~~— (d) The department shall do the following:~~

30 ~~— (1) Establish a state permit program under Section 2301 of the~~
 31 ~~federal Water Infrastructure Improvements for the Nation Act~~
 32 ~~(42 U.S.C. 6945(d)) for the implementation in Indiana of the~~
 33 ~~federal CCR rule.~~

34 ~~— (2) Submit to the administrator of the United States~~
 35 ~~Environmental Protection Agency under 42 U.S.C.~~
 36 ~~6945(d)(1)(A) evidence of the state permit program.~~

37 ~~— (3) Take other necessary or appropriate actions to obtain~~
 38 ~~approval of the state permit program.~~

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

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- 1 ~~— (f) Under IC 4-22-2 and IC 13-14-9:~~
- 2 ~~— (1) the department shall initiate rulemaking for the establishment~~
- 3 ~~of the state permit program not more than sixty (60) days after~~
- 4 ~~the effective date of the SECTION of Senate Enrolled Act~~
- 5 ~~271-2021 amending this section; and~~
- 6 ~~— (2) the board shall adopt a final rule for the establishment of the~~
- 7 ~~state permit program not more than sixteen (16) months after~~
- 8 ~~initiation of the rulemaking under subdivision (1):~~
- 9 ~~— (g) The state permit program established under this section must~~
- 10 ~~not establish requirements for any surface impoundment of coal~~
- 11 ~~combustion residuals unless and until the state permit program is~~
- 12 ~~approved by the administrator of the United States Environmental~~
- 13 ~~Protection Agency under 42 U.S.C. 6945(d)(1). **The authority of the**~~
- 14 ~~**department to establish requirements under the state permit**~~
- 15 ~~**program established under this section is the only authority the**~~
- 16 ~~**department has to establish requirements for a surface**~~
- 17 ~~**impoundment of coal combustion residuals located on the grounds**~~
- 18 ~~**of a legacy generation resource:**~~
- 19 ~~— (h) The definitions set forth in Section 257.53 of the federal CCR~~
- 20 ~~rule, as in effect January 1, 2021, apply throughout subsection (i):~~
- 21 ~~— (i) The department shall charge the following fees under the state~~
- 22 ~~permit program established under this section:~~
- 23 ~~— (1) An initial one (1) time permit fee of twenty thousand five~~
- 24 ~~hundred dollars (\$20,500) for each surface impoundment of coal~~
- 25 ~~combustion residuals regulated under the state permit program:~~
- 26 ~~— (2) An annual fee of twenty thousand five hundred dollars~~
- 27 ~~(\$20,500) for each surface impoundment of coal combustion~~
- 28 ~~residuals regulated under the state permit program that has not~~
- 29 ~~completed closure in accordance with Section 257.102 of the~~
- 30 ~~federal CCR rule. The duty to pay the fee established by this~~
- 31 ~~subdivision does not apply on an annual basis until three~~
- 32 ~~hundred sixty-five (365) days after the initial one (1) time permit~~
- 33 ~~fee established by subdivision (1) has been assessed:~~
- 34 ~~— (3) An annual fee of ten thousand dollars (\$10,000) for each~~
- 35 ~~surface impoundment of coal combustion residuals regulated~~
- 36 ~~under the state permit program that has been closed and for~~
- 37 ~~which post-closure care has been initiated and is still required in~~
- 38 ~~accordance with Section 257.104 of the federal CCR rule. The~~
- 39 ~~duty to pay the fee established by this subdivision does not apply~~
- 40 ~~on an annual basis until three hundred sixty-five (365) days after~~
- 41 ~~the initial one (1) time permit fee established by subdivision (1)~~
- 42 ~~has been assessed.~~

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1 ~~Fees collected under this subsection shall be deposited in the CCR~~
 2 ~~program fund established by section 3.2 of this chapter.~~
 3 ~~— (j) Not later than July 1, 2027, and before the end of each~~
 4 ~~succeeding period of five (5) years, the board shall review the:~~
 5 ~~— (1) costs to the department of operating the state permit program~~
 6 ~~established under this section; and~~
 7 ~~— (2) revenue from the fees charged under subsection (i);~~
 8 ~~as provided in IC 13-16-1-4. If the board determines that the revenue~~
 9 ~~described in subdivision (2) is inadequate or excessive in relation to the~~
 10 ~~costs described in subdivision (1), the board shall, under IC 13-16-1-2,~~
 11 ~~change the amount of one (1) or more of the fees established under~~
 12 ~~subsection (i).~~
 13 ~~— (k) Upon the effective date that the board adopts rules to~~
 14 ~~implement the federal CCR rule and subject to subsection (i), annual~~
 15 ~~fees for CCR landfills that were previously regulated as restricted waste~~
 16 ~~sites shall be deposited in the CCR program fund established by section~~
 17 ~~3.2 of this chapter.~~

18 > SECTION ~~<50>~~[49]. IC 25-1-5.3 IS ADDED TO THE INDIANA
 19 CODE AS A NEW CHAPTER TO READ AS FOLLOWS
 20 [EFFECTIVE JULY 1, 2023]:

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

22 **Sec. 1. The following definitions apply throughout this**
 23 **chapter:**

- 24 (1) "Agency" has the meaning set forth in IC 25-1-5-2.
- 25 (2) "Board" has the meaning set forth in IC 25-1-5-2.
- 26 (3) "Compliant", with respect to a licensure rule, means a
- 27 licensure rule that the agency or a board has adopted.
- 28 (4) "Enactment date" means the date on which a statute
- 29 requires rulemaking for a licensure rule to commence.
- 30 (5) "Executive director" refers to the individual described in
- 31 IC 25-1-5-5.
- 32 (6) "Licensee" has the meaning set forth in IC 25-1-5-11.
- 33 (7) "Licensure rule" means a rule that:
- 34 (A) relates to the issuance of a license, certificate,
- 35 registration, or permit, or a requirement or prerequisite
- 36 for obtaining a license, or keeping a license in good
- 37 standing; and
- 38 (B) is required by statute to be adopted by the agency or
- 39 a board.
- 40 (8) "Noncompliant", with respect to a licensure rule, means
- 41 a licensure rule that the agency or a board has not adopted
- 42 within eighteen (18) months of the enactment date.

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

7 **(b) If the executive director determines that the licensure rule**
8 **is noncompliant, the licensee is entitled to the relief described in**
9 **section 3 of this chapter.**

10 **(c) If:**
11 **(1) the executive director determines that the licensure rule**
12 **is compliant; or**
13 **(2) at least thirty (30) days have passed since the licensee**
14 **requested the executive director to confirm that the licensure**
15 **rule is noncompliant and the executive director has not**
16 **issued a determination;**

17 **the licensee may request that the governor or the attorney general**
18 **determine that the licensure rule is a noncompliant. A licensee may**
19 **not request that both the governor and the attorney general make**
20 **a determination under this subsection.**

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

24 **Sec. 3. (a) If the executive director, governor, or attorney**
25 **general determines that a licensure rule is noncompliant, the**
26 **licensee:**

27 **(1) is not required to pay the license fee to which the**
28 **licensure rule relates from the enactment date to the date the**
29 **licensure rule becomes compliant (if applicable); and**
30 **(2) is entitled to a refund of any license fee to which the**
31 **licensure rule relates from the enactment date to the date the**
32 **licensure rule becomes compliant (if applicable).**

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

35 **Sec. 4. (a) If the executive director has determined under**
36 **section 2 of this chapter that a licensure rule is noncompliant, and**
37 **the agency later adopts a licensure rule, the executive director may,**
38 **upon the request of any person, including the executive director,**
39 **make a new determination concerning the licensure rule. The**
40 **executive director shall issue the determination in writing.**

41 **(b) If the executive director determines that the licensure rule**
42 **is compliant, a licensee who disagrees with the determination may**

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1 request, not later than thirty (30) days after issuance of the new
2 determination, that the governor or attorney general review the
3 determination. The licensee may not request that both the
4 governor and the attorney general review the determination. If the
5 governor or attorney general determines that the licensure rule is
6 noncompliant, the determination of the governor or attorney
7 general controls.

8 Sec. 5. If the governor or attorney general determined that a
9 licensure rule was noncompliant under section 2 of this chapter,
10 and the agency later adopts a licensure rule, upon the request of
11 any person, the governor or attorney general may make a new
12 determination concerning the licensure rule. The governor or
13 attorney general shall issue the determination in writing.

14 Sec. 6. If the executive director, under section 4 of this chapter,
15 or the governor or attorney general, under section 5 of this
16 chapter, determines that a formerly noncompliant licensure rule
17 is now compliant, a licensee is required to pay the license fee to
18 which the licensure rule relates, beginning:

- 19 (1) from the date the new determination was issued; or
 - 20 (2) if the new determination was issued by the executive
21 director under section 4(a) of this chapter and the licensee
22 sought review by the governor or attorney general under
23 section 4(b) of this chapter, from the date the governor
24 attorney general issued a determination;
- 25 whichever is later.

26 SECTION 5 ~~↔~~ [0]. [EFFECTIVE UPON PASSAGE] (a) After
27 June 30, 2023, a rule may be adopted as an emergency rule only for
28 the purposes and through the procedures in IC 4-22-2-37.1 (as
29 effective after June 30, 2023). Any additional authority in a statute
30 outside IC 4-22 to adopt rules through the emergency rulemaking
31 procedures in IC 4-22-2-37.1 (as effective before July 1, 2023, or
32 after June 30, 2023) is void. The code revision commission shall
33 provide in calendar year 2023 for the preparation of a bill for
34 introduction in the 2024 regular session of the general assembly
35 that removes language outside IC 4-22 permitting the adoption of
36 emergency rules.

37 (b) This SECTION expires January 1, 2024.

38 SECTION 5 ~~↔~~ [1]. An emergency is declared for this act.

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