

# SENATE BILL No. 397

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 13-14-1-6; IC 13-14-1-11.5; IC 13-27-7-2.

**Synopsis:** Rulemaking requirements. Requires the department of environmental management, air pollution control board, water pollution control board, and the solid waste management board to adopt statements, policies, and administrative decisions concerning fees, fines, civil penalties, and other charges by rule.

**Effective:** July 1, 1999.

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January 11, 1999, read first time and referred to Committee on Environmental Affairs.

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First Regular Session 111th General Assembly (1999)

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

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

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

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## SENATE BILL No. 397



A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

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

1 SECTION 1. IC 13-14-1-6 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. (a) The department  
3 shall, in cooperation with other state agencies, establish programs to  
4 educate:

- 5 (1) students;
  - 6 (2) consumers; and
  - 7 (3) businesses;
- 8 about the benefits of solid waste recycling and source reduction.

9 (b) To implement the programs established under subsection (a), the  
10 department shall, **subject to IC 13-14-1-11.5**, develop guidance  
11 documents and technical assistance programs.

12 SECTION 2. IC 13-14-1-11.5 IS AMENDED TO READ AS  
13 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11.5. (a) If the  
14 department utilizes a policy or statement that:

- 15 (1) interprets, supplements, or implements a statute or rule;
- 16 (2) has not been adopted in compliance with IC 4-22-2;
- 17 (3) is not intended by the department to have the effect of law;



- 1 and  
 2 (4) is not related solely to internal department organization;  
 3 the policy or statement may be put into effect once the policy or  
 4 statement is made available for public inspection and copying.  
 5 (b) If the department utilizes a policy or statement described in  
 6 subsection (a), the department shall distribute:  
 7 (1) two (2) copies of the policy or statement to the publisher of  
 8 the Indiana Register for publication in the Indiana Register; and  
 9 (2) the copies required under IC 4-23-7.1-26 to the Indiana library  
 10 and historical department.  
 11 (c) The department shall:  
 12 (1) maintain a current list of all department policies and  
 13 statements described in subsection (a) that the department may  
 14 use in the department's external affairs; and  
 15 (2) update the list at least one (1) time each month.  
 16 (d) The department shall include the following information on the  
 17 list described in subsection (c) for each policy or statement:  
 18 (1) The title of the policy or statement.  
 19 (2) The identification number of the policy or statement.  
 20 (3) The date the policy or statement was originally adopted.  
 21 (4) The date the policy or statement was last revised.  
 22 (5) A reference to all other policies or statements described in  
 23 subsection (a) that are repealed or amended by the policy or  
 24 statement.  
 25 (6) A brief description of the subject matter of the policy or  
 26 statement.  
 27 (e) At least one (1) time every three (3) months, the department  
 28 shall distribute two (2) copies of the list maintained and updated under  
 29 subsection (c) to the following:  
 30 (1) The publisher of the Indiana Register.  
 31 (2) The Indiana library and historical department.  
 32 **(f) As soon as feasible after the issuance of a policy or statement,**  
 33 **including a guidance document, or a final decision in an**  
 34 **administrative proceeding that:**  
 35 **(1) gives guidance on the amount, factors to be considered in**  
 36 **calculating, or other issues related to a fee, fine, civil penalty,**  
 37 **or other charge that the department or a board is authorized**  
 38 **to impose;**  
 39 **(2) does not merely quote or restate a statute or rule; and**  
 40 **(3) will be used by the department or a board as the basis for**  
 41 **decisions after the issuance of the policy, statement, or**  
 42 **decision;**



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1 **the department, if the department is the appropriate rulemaking**  
 2 **authority, or the appropriate board shall adopt the part of the**  
 3 **policy, statement, or decision that deals with the fee, fine, civil**  
 4 **penalty, or other charge as a rule in conformity with IC 4-22-2.**

5 SECTION 3. IC 13-27-7-2 IS AMENDED TO READ AS  
 6 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) Guidance  
 7 documents, technical assistance manuals, and policies developed or  
 8 used in implementing programs under this article are not binding on  
 9 participating businesses.

10 (b) Subject to subsection (e), the air pollution control board, the  
 11 water pollution control board, the solid waste management board, or  
 12 the department may not do the following:

13 (1) **Subject to IC 13-14-1-11.5**, incorporate documents, manuals,  
 14 or policies developed under this article into rules adopted under  
 15 IC 4-22-2.

16 (2) Adopt rules under IC 4-22-2 requiring business  
 17 implementation of pollution prevention practices or of clean  
 18 manufacturing by means of any of the following:

19 (A) Permit conditions.

20 (B) Enforcement actions.

21 (C) Other department actions.

22 (c) Subsection (b) only applies to pollution prevention as defined in  
 23 this title.

24 (d) Subsection (b) does not apply to authority granted under federal  
 25 law to implement pollution prevention as defined under any of the  
 26 following:

27 (1) Federally delegated air, water, solid waste, and other  
 28 programs.

29 (2) Guidance documents developed to implement programs  
 30 described in subdivision (1).

31 (3) Programs established under IC 13-20-3, IC 13-20-22, or  
 32 IC 13-21.

33 (e) The department shall do the following:

34 (1) Present pollution prevention as an option to businesses in any  
 35 of the following:

36 (A) Permit conditions.

37 (B) Enforcement actions.

38 (C) Other department actions.

39 (2) Direct manufacturers to the clean manufacturing technology  
 40 and safe materials institute for technical assistance in clean  
 41 manufacturing.

42 SECTION 4. [EFFECTIVE JULY 1, 1999] (a) **This SECTION**

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1 applies to a policy, statement, or decision that:  
2 (1) is described in IC 13-14-1-11.5(f), as amended by this act;  
3 and  
4 (2) was issued by the department of environmental  
5 management, air pollution control board, water pollution  
6 control board, or solid waste management board before July  
7 1, 1999.  
8 (b) Notwithstanding IC 13-14-1-11.5, as amended by this act, the  
9 department and each board has until January 1, 2000, to adopt  
10 rules for policies, statements, and decisions described in subsection  
11 (a).

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