



February 15, 2005

# HOUSE BILL No. 1822

DIGEST OF HB 1822 (Updated February 9, 2005 4:14 pm - DI 103)

**Citations Affected:** IC 4-22.

**Synopsis:** Small business regulation. Requires an agency that intends to adopt a rule that will impose requirements or costs on small businesses to prepare an economic impact statement for the rule. Provides that the statement must include a regulatory flexibility analysis that evaluates alternative regulatory methods that could minimize the impact on small businesses. Requires the agency to: (1) publish the statement with the notice of public hearing for the rule; and (2) submit the statement and the rule to the office of economic development. Requires the agency to consider the office's written comments on the rule before adopting the rule. Provides that a small business aggrieved by a rule finally adopted by an agency may bring an action to determine whether the agency complied with the requirements concerning small businesses during the rulemaking process. Provides that before readopting a rule expiring after June 30, 2005, an agency must reevaluate the rule's impact on small businesses.

**Effective:** July 1, 2005.

## Austin, Borrer

January 25, 2005, read first time and referred to Committee on Commerce, Economic Development and Small Business.  
February 14, 2005, reported — Do Pass.

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HB 1822—LS 7761/DI 101+



February 15, 2005

First Regular Session 114th General Assembly (2005)

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 2004 Regular Session of the General Assembly.

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## HOUSE BILL No. 1822



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 4-22-2-24 IS AMENDED TO READ AS  
 2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 24. (a) An agency shall  
 3 notify the public of its intention to adopt a rule by complying with the  
 4 publication requirements in subsections (b) and (c).  
 5 (b) The agency shall cause a notice of a public hearing to be  
 6 published once in one (1) newspaper of general circulation in Marion  
 7 County, Indiana. To publish the newspaper notice, the agency shall  
 8 directly contract with the newspaper.  
 9 (c) The agency shall cause:  
 10 (1) a notice of public hearing; ~~and~~  
 11 (2) the full text of the agency's proposed rule (excluding the full  
 12 text of a matter incorporated by reference under section 21 of this  
 13 chapter); ~~and~~  
 14 (3) **after June 30, 2005, any statement required by**  
 15 **IC 4-22-2.1-5;**  
 16 to be published once in the Indiana Register. To publish the notice, ~~and~~  
 17 proposed rule, **and statement by IC 4-22-2.1-5** in the Indiana

HB 1822—LS 7761/DI 101+



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

6 (d) The agency shall include in the notice required by subsections  
 7 (b) and (c):

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

10 (2) a general description of the subject matter of the proposed  
 11 rule; and

12 (3) an explanation that the proposed rule may be inspected and  
 13 copied at the office of the agency.

14 However, inadequacy or insufficiency of the subject matter description  
 15 in a notice does not invalidate a rulemaking action.

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

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

23 SECTION 2. IC 4-22-2-28 IS AMENDED TO READ AS  
 24 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 28. (a) **Before July 1,**  
 25 **2005,** the Indiana economic development council may review and  
 26 comment on any proposed rule and may suggest alternatives to reduce  
 27 any regulatory burden that the proposed rule imposes on businesses.  
 28 **After June 30, 2005, the office of economic development**  
 29 **established by IC 4-1.5-7-1:**

30 (1) shall review a proposed rule that:

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

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

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

38 After conducting a review under subdivision (1) or (2), the office  
 39 may suggest alternatives to reduce any regulatory burden that the  
 40 proposed rule imposes on small businesses or other businesses. The  
 41 agency that intends to adopt the proposed rule shall respond in writing  
 42 to the Indiana economic development council or the office of

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1 **economic development** concerning the council's **or the office's**  
2 comments or suggested alternatives before adopting the proposed rule  
3 under section 29 of this chapter.

4 (b) The agency shall ~~also~~ submit a proposed rule with an estimated  
5 economic impact greater than five hundred thousand dollars  
6 (\$500,000) on the regulated entities to the legislative services agency  
7 after the preliminary adoption of the rule. Except as provided in  
8 subsection (c), before the adoption of the rule, the legislative services  
9 agency shall prepare, not more than forty-five (45) days after receiving  
10 a proposed rule, a fiscal analysis concerning the effect that compliance  
11 with the proposed rule will have on the:

- 12 (1) state; and
- 13 (2) entities regulated by the proposed rule.

14 The fiscal analysis must contain an estimate of the economic impact of  
15 the proposed rule and a determination concerning the extent to which  
16 the proposed rule creates an unfunded mandate on a state agency or  
17 political subdivision. The fiscal analysis is a public document. The  
18 legislative services agency shall make the fiscal analysis available to  
19 interested parties upon request. The agency proposing the rule shall  
20 consider the fiscal analysis as part of the rulemaking process and shall  
21 provide the legislative services agency with the information necessary  
22 to prepare the fiscal analysis, **including any economic impact**  
23 **statement prepared by the agency under IC 4-22-2.1-5.** The  
24 legislative services agency may also receive and consider applicable  
25 information from the regulated entities affected by the rule in  
26 preparation of the fiscal analysis.

- 27 (c) With respect to a proposed rule subject to IC 13-14-9:
  - 28 (1) the department of environmental management shall give
  - 29 written notice to the legislative services agency of the proposed
  - 30 date of preliminary adoption of the proposed rule not less than
  - 31 sixty-six (66) days before that date; and
  - 32 (2) the legislative services agency shall prepare the fiscal analysis
  - 33 referred to in subsection (b) not later than twenty-one (21) days
  - 34 before the proposed date of preliminary adoption of the proposed
  - 35 rule.

36 SECTION 3. IC 4-22-2-29 IS AMENDED TO READ AS  
37 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 29. (a) After an agency  
38 has complied with sections 26, 27, and 28 of this chapter, the agency  
39 may:

- 40 (1) adopt a rule that is identical to a proposed rule published in  
41 the Indiana Register under section 24 of this chapter;
- 42 (2) subject to subsection (b), adopt a rule that consolidates part or

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1 all of two (2) or more proposed rules published in the Indiana  
 2 Register under section 24 of this chapter and considered under  
 3 section 27 of this chapter;

4 (3) subject to subsection (b), adopt part of one (1) or more  
 5 proposed rules described in ~~subsection (a)(2)~~ **subdivision (2)** in  
 6 two (2) or more separate adoption actions; or

7 (4) subject to subsection (b), adopt a revised version of a  
 8 proposed rule published under section 24 of this chapter and  
 9 include provisions that did not appear in the published version,  
 10 **including any provisions recommended by the office of**  
 11 **economic development under IC 4-22-2.1-6(a), if applicable.**

12 (b) An agency may not adopt a rule that substantially differs from  
 13 the version or versions of the proposed rule or rules published in the  
 14 Indiana Register under section 24 of this chapter, unless it is a logical  
 15 outgrowth of any proposed rule as supported by any written comments  
 16 submitted:

17 (1) during the public comment period; or

18 (2) **by the office of economic development under**  
 19 **IC 4-22-2.1-6(a), if applicable.**

20 SECTION 4. IC 4-22-2.1 IS ADDED TO THE INDIANA CODE  
 21 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 22 JULY 1, 2005]:

23 **Chapter 2.1. Rules Affecting Small Businesses**

24 **Sec. 1. Except for a rule that is the subject of a rulemaking**  
 25 **action under IC 13-14-9, this chapter applies to a rule for which the**  
 26 **notice required by IC 4-22-2-23 is published by an agency after**  
 27 **June 30, 2005.**

28 **Sec. 2. The definitions in IC 4-22-2-3 apply throughout this**  
 29 **chapter.**

30 **Sec. 3. As used in this chapter, "office" refers to the office of**  
 31 **economic development established by IC 4-1.5-7-1.**

32 **Sec. 4. As used in this chapter, "small business" means any**  
 33 **person, firm, corporation, limited liability company, partnership,**  
 34 **or association that:**

35 (1) **is actively engaged in business in Indiana and maintains its**  
 36 **principal place of business in Indiana;**

37 (2) **is independently owned and operated;**

38 (3) **employs one hundred (100) or fewer full-time employees;**  
 39 **and**

40 (4) **has gross annual receipts of five million dollars**  
 41 **(\$5,000,000) or less.**

42 **Sec. 5. (a) If an agency intends to adopt a rule under IC 4-22-2**

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1 that will impose requirements or costs on small businesses, the  
2 agency shall prepare a statement that describes the annual  
3 economic impact of a rule on all small businesses after the rule is  
4 fully implemented as described in subsection (b). The statement  
5 required by this section must include the following:

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

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

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

19 (4) A statement justifying any requirement or cost that is:  
20 (A) imposed on small businesses by the rule; and  
21 (B) not expressly required by:  
22 (i) the statute authorizing the agency to adopt the rule;  
23 or  
24 (ii) any other state or federal law.

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

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

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

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

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

42 (D) The establishment of performance standards for small

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businesses instead of design or operational standards imposed on other regulated entities by the rule.

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

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

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

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

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

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

Sec. 6. (a) Not later than seven (7) days before the date of the public hearing set forth in the agency's notice under IC 4-22-2-24, the office shall do the following:

- (1) Review the proposed rule and economic impact statement submitted to the office by the agency under section 5(c) of this chapter.
- (2) Submit written comments to the agency on the proposed rule and the economic impact statement prepared by the agency under section 5 of this chapter. The office's comments may:

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- 1 (A) recommend that the agency implement one (1) or more
- 2 of the regulatory alternatives considered by the agency
- 3 under section 5(a)(5) of this chapter;
- 4 (B) suggest regulatory alternatives not considered by the
- 5 agency under section 5(a)(5) of this chapter;
- 6 (C) recommend any other changes to the proposed rule
- 7 that would minimize the economic impact of the proposed
- 8 rule on small businesses; or
- 9 (D) recommend that the agency abandon or delay the
- 10 rulemaking action until:
  - 11 (i) more data on the impact of the proposed rule on small
  - 12 businesses can be gathered and evaluated; or
  - 13 (ii) less intrusive or less costly alternative methods of
  - 14 achieving the purpose of the proposed rule can be
  - 15 effectively implemented with respect to small businesses.
- 16 (b) Upon receipt of the office's written comments under
- 17 subsection (a), the agency shall make the comments available:
  - 18 (1) for public inspection and copying at the offices of the
  - 19 agency under IC 5-14-3;
  - 20 (2) electronically through the electronic gateway administered
  - 21 by the intelenet commission; and
  - 22 (3) for distribution at the public hearing required by
  - 23 IC 4-22-2-26.
- 24 (c) Before finally adopting a rule under IC 4-22-2-29, and in the
- 25 same manner that the agency considers public comments under
- 26 IC 4-22-2-27, the agency must fully consider the comments
- 27 submitted by the office under subsection (a). After considering the
- 28 comments under this subsection, the agency may:
  - 29 (1) adopt any version of the rule permitted under
  - 30 IC 4-22-2-29; or
  - 31 (2) abandon or delay the rulemaking action as recommended
  - 32 by the office under subsection (a)(2)(D), if applicable.
- 33 **Sec. 7. Before an agency may act under IC 4-22-2.5 to readopt**
- 34 **a rule to which the chapter applies, the agency must conduct the**
- 35 **review required under IC 4-22-2.5-3.1.**
- 36 **Sec. 8. (a) This section applies to a small business that is**
- 37 **adversely affected or aggrieved by a rule that:**
  - 38 (1) is subject to this chapter;
  - 39 (2) is finally adopted by an agency under IC 4-22-2-29; and
  - 40 (3) has taken effect under IC 4-22-2-36.
- 41 (b) In addition to or instead of filing a complaint with the
- 42 administrative rules oversight committee under IC 2-5-18-8, and

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1 subject to subsection (c), a small business described in subsection  
 2 (a) may file, in a court having jurisdiction, an action seeking a  
 3 determination of the agency's compliance with the requirements of  
 4 this chapter during the rulemaking process. Upon receipt of a  
 5 complaint under this section, the court shall, at the earliest date  
 6 possible, hear evidence on the matter and make a determination as  
 7 to the agency's compliance with this chapter during the rulemaking  
 8 process. If the court determines that the agency failed to comply  
 9 with one (1) or more requirements of this chapter, the court may  
 10 issue an order or injunction enjoining the agency from enforcing  
 11 the rule with respect to the complaining small business and any  
 12 similarly situated small businesses. A determination of the court  
 13 under this section is final, subject to the right of direct appeal by  
 14 either party.

15 (c) A small business that seeks a determination by a court under  
 16 subsection (b) must file the action described in subsection (b) not  
 17 later than one year (1) after the date the rule described in  
 18 subsection (a) takes effect under IC 4-22-2-36.

19 SECTION 5. IC 4-22-2.5-3 IS AMENDED TO READ AS  
 20 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) An agency that  
 21 wishes to readopt a rule that is subject to expiration under this chapter  
 22 must:

23 (1) follow the procedure for adoption of administrative rules  
 24 under IC 4-22-2; and

25 (2) for a rule that expires under this chapter after June 30,  
 26 2005, conduct any review required under section 3.1 of this  
 27 chapter.

28 (b) An agency may adopt a rule under IC 4-22-2 in anticipation of  
 29 a rule's expiration under this chapter.

30 (c) An agency may not use IC 4-22-2-37.1 to readopt a rule that is  
 31 subject to expiration under this chapter.

32 SECTION 6. IC 4-22-2.5-3.1 IS ADDED TO THE INDIANA  
 33 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 34 [EFFECTIVE JULY 1, 2005]: **Sec. 3.1. (a) This section applies to a**  
 35 **rule that:**

36 (1) expires under this chapter after June 30, 2005; and

37 (2) imposes requirements or costs on small businesses.

38 (b) As used in this section, "small business" has the meaning set  
 39 forth in IC 4-22-2.1-4.

40 (c) Before an agency may act under section 3 of this chapter to  
 41 readopt a rule described in subsection (a), the agency shall conduct  
 42 a review to consider whether there are any alternative methods of

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1 achieving the purpose of the rule that are less costly or less  
2 intrusive, or that would otherwise minimize the economic impact  
3 of the proposed rule on small businesses. In reviewing a rule under  
4 this section, the agency shall consider the following:

- 5 (1) The continued need for the rule.
- 6 (2) The nature of any complaints or comments received from  
7 the public, including small businesses, concerning the rule or  
8 the rule's implementation by the agency.
- 9 (3) The complexity of the rule, including any difficulties  
10 encountered by:
  - 11 (A) the agency in administering the rule; or
  - 12 (B) small businesses in complying with the rule.
- 13 (4) The extent to which the rule overlaps, duplicates, or  
14 conflicts with other federal, state, or local laws, rules,  
15 regulations, or ordinances.
- 16 (5) The length of time since the rule was last reviewed under  
17 this section or otherwise evaluated by the agency, and the  
18 degree to which technology, economic conditions, or other  
19 factors have changed in the area affected by the rule since  
20 that time.

21 (d) This subsection applies to a rule that was adopted through  
22 a rulemaking action initiated by the agency under IC 4-22-2-23  
23 after June 30, 2005. In reviewing the rule under this section, the  
24 agency shall reexamine the most recent economic impact statement  
25 prepared by the agency under IC 4-22-2.1-5. The agency shall  
26 consider:

- 27 (1) the degree to which the factors analyzed in the statement  
28 have changed since the statement was prepared; and
- 29 (2) whether:
  - 30 (A) any regulatory alternatives included in the statement  
31 under IC 4-22-2.1-5(a)(5); or
  - 32 (B) any regulatory alternatives not considered by the  
33 agency at the time the statement was prepared;  
34 could be implemented to replace one (1) or more of the rule's  
35 existing requirements.

36 (e) After conducting the review required by this section, the  
37 agency shall:

- 38 (1) readopt the rule without change, if no alternative  
39 regulatory methods exist that could minimize the economic  
40 impact of the rule on small businesses while still achieving the  
41 purpose of the rule;
- 42 (2) amend the rule to implement alternative regulatory

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**methods that will minimize the economic impact of the rule on small businesses; or**  
**(3) repeal the rule, if the need for the rule no longer exists.**

SECTION 7. IC 4-22-2.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) Except as provided in subsection (b) **and subject to section 3.1 of this chapter**, an agency may readopt all rules subject to expiration under this chapter under one (1) rule that lists all rules that are readopted by their titles and subtitles only. A rule that has expired but is readopted under this subsection may not be removed from the Indiana Administrative Code.

(b) If, not later than thirty (30) days after an agency's publication of notice of its intention to adopt a rule under IC 4-22-2-24 using the listing allowed under subsection (a), a person submits to the agency a written request and the person's basis for the request that a particular rule be readopted separately from the readoption rule described in subsection (a), the agency must:

- (1) readopt that rule separately from the readoption rule described in subsection (a); and
- (2) follow the procedure for adoption of administrative rules under IC 4-22-2 with respect to the rule.

(c) If the agency does not receive a written request under subsection (b) regarding a rule within thirty (30) days after the agency's publication of notice, the agency may:

- (1) submit the rule for filing with the secretary of state under IC 4-22-2-35 and publish notice in the Indiana Register that the agency has readopted the rule; or
- (2) elect the procedure for readoption under IC 4-22-2.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Economic Development and Small Business, to which was referred House Bill 1822, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BORROR, Chair

Committee Vote: yeas 11, nays 0.

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