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# SENATE BILL No. 159

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 13-14-9-8.

**Synopsis:** Air pollution tailoring rules. Provides that, if the commissioner of the department of environmental management determines that a proposed rule constitutes an adoption or incorporation by reference of a federal law, regulation, or rule: (1) the proposed rule may not be adopted if after the commissioner's determination the federal law, regulation, or rule on which the proposed rule is based is repealed, is invalidated by judicial, legislative, or regulatory action, or has its enforcement stayed; and (2) the commissioner may not enforce the adopted rule if after the adoption the federal law, regulation, or rule on which the proposed rule is based is repealed, is invalidated by judicial, legislative, or regulatory action, or has its enforcement stayed.

**Effective:** Upon passage.

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**Gard**

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January 5, 2011, read first time and referred to Committee on Energy and Environmental Affairs.

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Introduced

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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## SENATE BILL No. 159

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 13-14-9-8, AS AMENDED BY P.L.204-2007,  
2 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 UPON PASSAGE]: Sec. 8. (a) Unless a board determines that a  
4 proposed rule should be subject to additional comments or makes a  
5 determination described in subsection (f), sections 2 through 7 and  
6 sections 9 through 14 of this chapter do not apply to a rulemaking  
7 action if the commissioner determines that:

- 8 (1) the proposed rule constitutes:  
9 (A) an adoption or incorporation by reference of a federal law,  
10 regulation, or rule that:  
11 (i) is or will be applicable to Indiana; and  
12 (ii) contains no amendments that have a substantive effect  
13 on the scope or intended application of the federal law or  
14 rule;  
15 (B) a technical amendment with no substantive effect on an  
16 existing Indiana rule; or  
17 (C) a substantive amendment to an existing Indiana rule, the



1 primary and intended purpose of which is to clarify the  
 2 existing rule; and  
 3 (2) the proposed rule is of such nature and scope that there is no  
 4 reasonably anticipated benefit to the environment or the persons  
 5 referred to in section 7(a)(2) of this chapter from the following:  
 6 (A) Exposing the proposed rule to diverse public comment  
 7 under section 3 or 4 of this chapter.  
 8 (B) Affording interested or affected parties the opportunity to  
 9 be heard under section 3 or 4 of this chapter.  
 10 (C) Affording interested or affected parties the opportunity to  
 11 develop evidence in the record collected under sections 3 and  
 12 4 of this chapter.  
 13 (b) If the commissioner makes a determination under subsection (a),  
 14 the commissioner shall prepare written findings under this section. The  
 15 full text of the commissioner's written findings shall be included in:  
 16 (1) the notice of adoption of the proposed rule; and  
 17 (2) the written materials to be considered by the board at the  
 18 public hearing held under this section.  
 19 (c) The notice of adoption of a proposed rule under this section  
 20 must:  
 21 (1) be published in the Indiana Register; and  
 22 (2) include the following:  
 23 (A) Draft rule language that includes the language described in  
 24 subsection (a)(1).  
 25 (B) A written comment period of at least thirty (30) days.  
 26 (C) A notice of public hearing before the appropriate board.  
 27 (d) The department shall include the following in the written  
 28 materials to be considered by the board at the public hearing referred  
 29 to in subsection (c):  
 30 (1) The full text of the proposed rule as most recently prepared by  
 31 the department.  
 32 (2) Written responses of the department to written comments  
 33 received during the comment period referred to in subsection (c).  
 34 (3) The commissioner's findings under subsection (b).  
 35 (e) At the public hearing referred to in subsection (c), the board  
 36 may:  
 37 (1) **except as provided in subsection (g)**, adopt the proposed  
 38 rule;  
 39 (2) reject the proposed rule;  
 40 (3) determine that additional public comment is necessary; or  
 41 (4) determine to reconsider the proposed rule at a subsequent  
 42 board meeting.

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1 (f) If the board determines under subsection (e) that additional  
2 public comment is necessary, the department shall publish a second  
3 notice in accordance with section 4 of this chapter and complete the  
4 rulemaking in accordance with this chapter.

5 (g) **The board may not adopt a proposed rule under subsection**  
6 **(e)(1) if:**

7 (1) **the commissioner makes a determination with respect to**  
8 **a proposed rule under subsection (a)(1)(A); and**

9 (2) **after that determination is made, the federal law,**  
10 **regulation, or rule on which the proposed rule is based:**

11 (A) **is repealed;**

12 (B) **is invalidated by judicial, legislative, or regulatory**  
13 **action; or**

14 (C) **has its enforcement stayed.**

15 (h) **If:**

16 (1) **the commissioner makes a determination with respect to**  
17 **a proposed rule under subsection (a)(1)(A);**

18 (2) **the board adopts the proposed rule under subsection**  
19 **(e)(1); and**

20 (3) **after the adoption described in subdivision (2), the federal**  
21 **law, regulation, or rule on which the proposed rule is based:**

22 (A) **is repealed;**

23 (B) **is invalidated by judicial, legislative, or regulatory**  
24 **action; or**

25 (C) **has its enforcement stayed;**

26 **the commissioner may not enforce the adopted rule.**

27 **SECTION 2. An emergency is declared for this act.**

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