

SENATE BILL No. 471

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-22-2-28.

Synopsis: Limitation on adoption of agency rules. Specifies that an administrative agency may not adopt a rule under IC 4-22-2 that will increase the administrative costs of the state, an instrumentality of the state, or a political subdivision unless the rule is required to comply with a federal law, a federal regulation, a court order, or the terms of a federal grant or loan. Provides for a fiscal analysis of administrative costs by the office of management and budget.

Effective: Upon passage.

Leising

January 13, 2011, read first time and referred to Committee on Tax and Fiscal Policy.

C
o
p
y



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.

C
o
p
y

SENATE BILL No. 471



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 4-22-2-28, AS AMENDED BY P.L.110-2010,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 28. (a) The following definitions apply
4 throughout this section:
5 (1) "Ombudsman" refers to the small business ombudsman
6 designated under IC 5-28-17-5.
7 (2) "Total estimated economic impact" means the annual
8 economic impact of a rule on all regulated persons after the rule
9 is fully implemented under subsection (g).
10 (b) The ombudsman:
11 (1) shall review a proposed rule that:
12 (A) imposes requirements or costs on small businesses (as
13 defined in IC 4-22-2.1-4); and
14 (B) is referred to the ombudsman by an agency under
15 IC 4-22-2.1-5(c); and
16 (2) may review a proposed rule that imposes requirements or
17 costs on businesses other than small businesses (as defined in



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

IC 4-22-2.1-4).
After conducting a review under subdivision (1) or (2), the ombudsman may suggest alternatives to reduce any regulatory burden that the proposed rule imposes on small businesses or other businesses. The agency that intends to adopt the proposed rule shall respond in writing to the ombudsman concerning the ombudsman's comments or suggested alternatives before adopting the proposed rule under section 29 of this chapter.

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

- (1) a total estimated economic impact greater than five hundred thousand dollars (\$500,000) on all regulated persons; or
- (2) any estimated fiscal impact on the administrative costs of the state, an instrumentality of the state, or a political subdivision.**

In determining the total estimated economic impact under this subsection, the agency shall consider any applicable information submitted by the regulated persons affected by the rule. To assist the office of management and budget in preparing the fiscal impact statement required by subsection (d), the agency shall submit, along with the proposed rule, the data used and assumptions made by the agency in determining the total estimated economic impact of the rule.

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

- (1) the state;
- (2) political subdivisions; and**
- ~~(3)~~ **(3) all persons regulated by the proposed rule.**

The fiscal impact statement must contain the total estimated economic impact of the proposed rule, **the total estimated fiscal impact on the administrative costs of the state, the total estimated fiscal impact on the administrative costs of political subdivisions,** and a determination concerning the extent to which the proposed rule creates an unfunded mandate on a state agency or political subdivision. The

C
O
P
Y



1 fiscal impact statement is a public document. The office of
 2 management and budget shall make the fiscal impact statement
 3 available to interested parties upon request. The agency proposing the
 4 rule shall consider the fiscal impact statement as part of the rulemaking
 5 process and shall provide the office of management and budget with
 6 the information necessary to prepare the fiscal impact statement,
 7 including any economic impact statement prepared by the agency under
 8 IC 4-22-2.1-5. **After May 1, 2010, an agency may not adopt a rule**
 9 **that will increase the administrative costs of the state agency, an**
 10 **instrumentality of the state, or a political subdivision unless the**
 11 **rule is required to comply with a federal law, a federal regulation,**
 12 **a court order, or the terms of a federal grant or loan.** The office of
 13 management and budget may also receive and consider applicable
 14 information from the regulated persons affected by the rule in
 15 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

C
o
p
y



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

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

**C
o
p
y**

