



Reprinted
February 15, 2011

SENATE BILL No. 159

DIGEST OF SB 159 (Updated February 14, 2011 4:40 pm - DI 118)

Citations Affected: IC 13-14.

Synopsis: Streamlined environmental rule making procedures. 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if after the commissioner's determination the federal law, regulation, or rule on which the proposed rule is based is repealed, is invalidated by judicial, legislative, or regulatory action, or has its enforcement stayed; and (2) the commissioner may not enforce the adopted rule if after the adoption the federal law, regulation, or rule on which the proposed rule is based is repealed, is invalidated by judicial, legislative, or regulatory action, or has its enforcement stayed. Specifies how legislative, administrative, or judicial action related to a federal law, rule, or regulation affects a state rule based on the federal law, rule, or regulation. Establishes that a state rule be affected by that specific part of the invalidated law or regulation. Provides that the state or federal court affecting a rule adopted by the department has jurisdiction over Indiana laws and regulations.

Effective: Upon passage.

Gard, Charbonneau, Tallian

January 5, 2011, read first time and referred to Committee on Energy and Environmental Affairs.
February 8, 2011, amended, reported favorably — Do Pass.
February 14, 2011, read second time, amended, ordered engrossed.

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SB 159—LS 6590/DI 52+



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

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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) adopt the proposed rule;
 38 (2) reject the proposed rule;
 39 (3) determine that additional public comment is necessary; or
 40 (4) determine to reconsider the proposed rule at a subsequent
 41 board meeting.
 42 (f) If the board determines under subsection (e) that additional

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1 public comment is necessary, the department shall publish a second
2 notice in accordance with section 4 of this chapter and complete the
3 rulemaking in accordance with this chapter.

4 **(g) This subsection applies to part of a rule adopted under this**
5 **section that directly corresponds to and is based on a federal law,**
6 **rule, or regulation that is stayed or repealed, invalidated, vacated,**
7 **or otherwise nullified by a legislative, an administrative, or a**
8 **judicial action described in subdivision (1), (2), or (3). If:**

9 **(1) a proposed rule is adopted by a board under subsection**
10 **(e)(1) based on a determination by the commissioner under**
11 **subsection (a)(1)(A) and the federal law, rule, or regulation on**
12 **which the adopted rule is based is later repealed or otherwise**
13 **nullified by legislative or administrative action, the adopted**
14 **rule is void as of the effective date of the legislative or**
15 **administrative action repealing or otherwise nullifying the**
16 **federal law, rule, or regulation;**

17 **(2) a board adopts a proposed rule under subsection (e)(1)**
18 **that is based on a determination by the commissioner under**
19 **subsection (a)(1)(A) and the federal law, rule, or regulation on**
20 **which the adopted rule is based is later invalidated, vacated,**
21 **or otherwise nullified by a judicial decree, order, or judgment**
22 **of a state or federal court with jurisdiction in Indiana:**

23 **(A) the rule shall not be enforced by the commissioner or**
24 **any other person during the time in which an appeal of the**
25 **judicial decree, order, or judgment can be commenced or**
26 **is pending; and**

27 **(B) the:**

28 **(i) adopted rule is void as of the date that the judicial**
29 **decree, order, or judgment becomes final and**
30 **unappealable; and**

31 **(ii) enforcement of the adopted rule is restored if the**
32 **judicial decree, order, or judgment is reversed, vacated,**
33 **or otherwise nullified on appeal; and**

34 **(3) the federal law, regulation, or rule that is the basis of a**
35 **rule that is adopted under subsection (e)(1) and based on a**
36 **determination by the commissioner under subsection (a)(1)(A)**
37 **is stayed by an administrative or a judicial order pending an**
38 **administrative or a judicial action regarding the validity of**
39 **the federal law, rule, or regulation, the commissioner may**
40 **suspend the enforcement of the adopted rule while the stay is**
41 **in force.**

42 SECTION 2. An emergency is declared for this act.

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COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 159, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, delete lines 5 through 26, begin a new paragraph and insert:

"(g) This subsection applies to any part of a rule adopted under this section that directly corresponds to and is based on any part of a federal law, rule, or regulation that is stayed or repealed, invalidated, vacated, or otherwise nullified by a legislative, an administrative, or a judicial action described in subdivision (1), (2), or (3). If:

(1) a proposed rule is adopted by a board under subsection (e)(1) based on a determination by the commissioner under subsection (a)(1)(A) and the federal law, rule, or regulation on which the adopted rule is based is later repealed or otherwise nullified by legislative or administrative action, the adopted rule is void as of the effective date of the legislative or administrative action repealing or otherwise nullifying the federal law, rule, or regulation;

(2) a board adopts a proposed rule under subsection (e)(1) that is based on a determination by the commissioner under subsection (a)(1)(A) and the federal law, rule, or regulation on which the adopted rule is based is later invalidated, vacated, or otherwise nullified by a judicial decree, order, judgment, or ruling:

(A) the rule shall not be enforced by the commission or any other person during the time in which an appeal of the judicial decree, order, judgment, or ruling can be commenced or is pending; and

(B) the:

(i) adopted rule is void as of the date that the judicial decree, order, judgment, or ruling becomes a final unappealable decree, order, judgment, or ruling; and

(ii) enforcement of the adopted rule is restored if the judicial decree, order, judgment, or ruling is reversed, vacated, or otherwise nullified on appeal; and

(3) the federal law, regulation, or rule that is the basis of a rule that is adopted under subsection (e)(1) and based on a determination by the commissioner under subsection (a)(1)(A) is stayed by an administrative or a judicial order pending an

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administrative or a judicial action regarding the validity of the federal law, rule, or regulation, the commissioner may suspend the enforcement of the adopted rule while the stay is in force."

and when so amended that said bill do pass.

(Reference is to SB 159 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 9, Nays 0.

SENATE MOTION

Madam President: I move that Senate Bill 159 be amended to read as follows:

Page 2, line 37, delete "except as provided in subsection (g)".

Page 3, line 5, delete "any".

Page 3, line 6, delete "any part".

Page 3, line 7, delete "of".

Page 3, line 23, delete "judgment," and insert "**or judgment of a state or federal court with jurisdiction in Indiana:**".

Page 3, delete line 24.

Page 3, line 25, delete "commission" and insert "**commissioner**".

Page 3, line 27, delete "judgment, or ruling" and insert "**or judgment**".

Page 3, line 31, delete "judgment, or ruling becomes a final" and insert "**or judgment becomes final and unappealable; and**".

Page 3, delete line 32.

Page 3, line 34, delete "judgment, or ruling" and insert "**or judgment**".

(Reference is to SB 159 as printed February 9, 2011.)

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