



February 21, 2012

**ENGROSSED
SENATE BILL No. 311**

DIGEST OF SB 311 (Updated February 21, 2012 11:07 am - DI 87)

Citations Affected: IC 4-3.

Synopsis: Cost benefit analysis for administrative rules. With certain exceptions, requires the office of management and budget (OMB) to prepare for each administrative rule that: (1) has been adopted; and (2) has taken effect; after December 31, 2011, a cost benefit analysis with respect to the first three years following the rule's effective date. Provides that if the OMB finds that a proposed rule is: (1) an adoption or incorporation by reference of a federal law, regulation, or rule that has no substantive effect on the scope or intended application of the federal law or rule; or (2) a technical amendment with no substantive effect on an existing Indiana rule; the OMB may not prepare a cost
(Continued next page)

Effective: July 1, 2012.

**Hershman, Gard, Schneider, Buck,
Randolph, Tomes**

(HOUSE SPONSORS — TRUITT, VANNATTER)

January 5, 2012, read first time and referred to Committee on Energy and Environmental Affairs.
January 17, 2012, amended, reported favorably — Do Pass.
January 30, 2012, read second time, amended, ordered engrossed. Returned to second reading.
January 31, 2012, re-read second time, amended, ordered engrossed. Engrossed.
February 1, 2012, re-engrossed. Read third time, passed. Yeas 50, nays 0.
HOUSE ACTION
February 9, 2012, read first time and referred to Committee on Government and Regulatory Reform.
February 21, 2012, amended, reported — Do Pass.

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benefit analysis of the proposed rule or with respect to the first three years following the rule's effective date. Requires the OMB to submit its findings that the OMB may not prepare a cost benefit analysis on the rule to the administrative rules oversight committee and the governor. Provides that a cost benefit analysis may contain additional information that the governor or the committee requests in writing. Provides that a cost benefit analysis must include certain information concerning the three year period covered by the analysis. Requires the OMB to submit a cost benefit analysis to: (1) the governor; and (2) the administrative rules oversight committee (committee); not later than six months after the third anniversary of the rule's effective date. Provides that the governor or the committee may prescribe: (1) the form of a cost benefit analysis; and (2) the process, deadlines, and other requirements for submitting a cost benefit analysis. Provides that in preparing a cost benefit analysis: (1) before a rule's adoption under the existing statute that requires a cost benefit analysis for proposed rules; or (2) after a rule's adoption and effective date under the act; the OMB shall consider any verified data provided voluntarily by interested parties, regulated persons, and nonprofit corporations whose members may be affected by the rule. Provides that if the OMB or an agency is unable to obtain verified data for a cost benefit analysis, the OMB shall state in the analysis which data were unavailable. Provides that a cost benefit analysis prepared before or after a rule's adoption is a public document, subject to the following: (1) The OMB or an agency may not require an interested party or a regulated person to provide information in connection with an analysis. (2) If an interested party or a regulated person voluntarily provides information, the OMB or an agency responsible for proposing or administering the rule shall ensure adequate protection of any confidential or proprietary information provided. (3) At least 30 days before presenting the cost benefit analysis to the governor and the committee, the OMB shall make the cost benefit analysis available to interested parties, regulated persons, and nonprofit corporations whose members may be affected by the rule. Provides that if an agency has adopted rules regarding the confidentiality of information, interested parties and regulated persons must submit the information in accordance with the confidentiality rules adopted by the agency to ensure proper processing of confidentiality claims. Requires the OMB to submit its findings and cost benefit analyses to the administrative oversight committee by electronic means.

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Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 311

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 4-3-22-13, AS ADDED BY P.L.246-2005,
2 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2012]: Sec. 13. (a) **Except as provided in subsection (e)**, the
4 OMB shall perform a cost benefit analysis upon each proposed rule and
5 provide to:
6 (1) the governor; and
7 (2) the administrative rules oversight committee established under
8 IC 2-5-18;
9 an assessment of the rule's effect on Indiana business. **The OMB shall**
10 **submit the cost benefit analysis to the committee in an electronic**
11 **format under IC 5-14-6.**
12 (b) After June 30, 2005, the cost benefit analysis performed by the
13 OMB under this section with respect to any proposed rule that has an
14 impact of at least five hundred thousand dollars (\$500,000) shall
15 replace and be used for all purposes under IC 4-22-2 in lieu of the
16 fiscal analysis previously performed by the legislative services agency
17 under IC 4-22-2.

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1 (c) In preparing a cost benefit analysis under this section, the
2 OMB shall consider in its analysis any verified data provided
3 voluntarily by interested parties, regulated persons, and nonprofit
4 corporations whose members may be affected by the proposed
5 rule. A cost benefit analysis prepared under this section is a public
6 document, subject to the following:

7 (1) This subsection does not empower the OMB or an agency
8 to require an interested party or a regulated person to
9 provide any materials, documents, or other information in
10 connection with a cost benefit analysis under this section. If an
11 interested party or a regulated person voluntarily provides
12 materials, documents, or other information to the OMB or an
13 agency in connection with a cost benefit analysis under this
14 section, the OMB or the agency, as applicable, shall ensure the
15 adequate protection of any:

- 16 (A) information that is confidential under IC 5-14-3-4; or
17 (B) confidential and proprietary business plans and other
18 confidential information.

19 If an agency has adopted rules to implement IC 5-14-3-4,
20 interested parties and regulated persons must submit the
21 information in accordance with the confidentiality rules
22 adopted by the agency to ensure proper processing of
23 confidentiality claims. The OMB and any agency involved in
24 proposing the rule, or in administering the rule upon the
25 rule's adoption, shall exercise all necessary caution to avoid
26 disclosure of any confidential information supplied to the
27 OMB or the agency by an interested party or a regulated
28 person.

29 (2) The OMB shall make the cost benefit analysis and other
30 related public documents available to interested parties,
31 regulated persons, and nonprofit corporations whose
32 members may be affected by the proposed rule at least thirty
33 (30) days before presenting the cost benefit analysis to the
34 governor and the administrative rules oversight committee
35 under subsection (a).

36 (d) If the OMB or an agency is unable to obtain verified data for
37 the cost benefit analysis described in subsection (c), the OMB shall
38 state in the cost benefit analysis which data were unavailable for
39 purposes of the cost benefit analysis.

40 (e) If the OMB finds that a proposed rule is:

- 41 (1) an adoption or incorporation by reference of a federal law,
42 regulation, or rule that has no substantive effect on the scope

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- 1 or intended application of the federal law or rule; or
 2 (2) a technical amendment with no substantive effect on an
 3 existing Indiana rule;

4 the OMB may not prepare a cost benefit analysis of the rule under
 5 this section. The agency shall submit the proposed rule to the OMB
 6 with a statement explaining how the proposed rule meets the
 7 requirements of this subsection. If the OMB finds that the rule
 8 meets the requirements of this subsection, the OMB shall provide
 9 its findings to the governor and to the committee in an electronic
 10 format under IC 5-14-6. If the agency amends or modifies the
 11 proposed rule after the OMB finds that a cost benefit analysis may
 12 not be prepared for the rule, the agency shall resubmit the
 13 proposed rule to the OMB either for a new determination that the
 14 rule meets the requirements of this subsection, or for the OMB to
 15 prepare a cost benefit analysis of the rule under this section.

16 SECTION 2. IC 4-3-22-13.1 IS ADDED TO THE INDIANA CODE
 17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 18 1, 2012]: Sec. 13.1. (a) This section applies to a rule that:

- 19 (1) has been adopted under IC 4-22-2 or IC 13-14-9; and
 20 (2) has taken effect;

21 after December 31, 2011.

22 (b) This section does not apply to a rule for which the OMB has
 23 not performed a cost benefit analysis under section 13(e) of this
 24 chapter.

25 (c) As used in this section, "committee" refers to the
 26 administrative rules oversight committee established by
 27 IC 2-5-18-4.

28 (d) For each rule to which this section applies, the OMB shall
 29 perform a cost benefit analysis of the rule with respect to the
 30 period encompassing the first three (3) years following the rule's
 31 effective date. Except as otherwise required by the governor or the
 32 committee under subsection (h), the OMB shall submit a cost
 33 benefit analysis prepared under this section to:

- 34 (1) the governor; and
 35 (2) the committee;

36 not later than six (6) months after the third anniversary of the
 37 rule's effective date. The OMB shall submit the cost benefit
 38 analysis to the committee in an electronic format under IC 5-14-6.

39 (e) A cost benefit analysis prepared under this section must
 40 include the following with respect to the three (3) year period
 41 covered by the analysis:

- 42 (1) The cost benefit analysis for the rule prepared under

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1 section 13 of this chapter before the rule's adoption, including
 2 the information required by Financial Management Circular
 3 #2010-4.

4 (2) A statement of the number of regulated persons, classified
 5 by industry sector, subject to the rule.

6 (3) A comparison of:

7 (A) the cost benefit analysis for the rule prepared under
 8 section 13 of this chapter before the rule's implementation;
 9 and

10 (B) the actual costs and benefits of the rule during the first
 11 three (3) years of the rule's implementation.

12 (4) For each element of the rule that is also the subject of
 13 restrictions or requirements imposed under federal law, a
 14 comparison of:

15 (A) the restrictions or requirements imposed under the
 16 rule; and

17 (B) the restrictions or requirements imposed under federal
 18 law.

19 (5) Any other information that the governor or the
 20 committee:

21 (A) requires with respect to a cost benefit analysis under
 22 this section; and

23 (B) requests in writing.

24 (f) In preparing a cost benefit analysis under this section, the
 25 OMB shall consider in its analysis any verified data provided
 26 voluntarily by interested parties, regulated persons, and nonprofit
 27 corporations whose members may be affected by the rule. A cost
 28 benefit analysis prepared under this section is a public document,
 29 subject to the following:

30 (1) This subsection does not empower the OMB or an agency
 31 to require an interested party or a regulated person to
 32 provide any materials, documents, or other information. If an
 33 interested party or a regulated person voluntarily provides
 34 materials, documents, or other information to the OMB or an
 35 agency in connection with a cost benefit analysis under this
 36 section, the OMB or the agency, as applicable, shall ensure the
 37 adequate protection of any:

38 (A) information that is confidential under IC 5-14-3-4; or

39 (B) confidential and proprietary business plans and other
 40 confidential information.

41 If an agency has adopted rules to implement IC 5-14-3-4,
 42 interested parties and regulated persons must submit the

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1 information in accordance with the confidentiality rules
2 adopted by the agency to ensure proper processing of
3 confidentiality claims. The OMB and any agency involved in
4 administering the rule shall exercise all necessary caution to
5 avoid disclosure of any confidential information supplied to
6 the OMB or the agency by an interested party or a regulated
7 person.

8 (2) The OMB shall make the cost benefit analysis and other
9 related public documents available to interested parties,
10 regulated persons, and nonprofit corporations whose
11 members may be affected by the rule at least thirty (30) days
12 before presenting the cost benefit analysis to the governor and
13 the committee under subsection (d).

14 (g) If the OMB or an agency is unable to obtain verified data for
15 the cost benefit analysis described in subsection (e), the OMB shall
16 state in the cost benefit analysis which data were unavailable for
17 purposes of the cost benefit analysis.

18 (h) The governor or the committee, or both, may prescribe:

19 (1) the form of a cost benefit analysis; and

20 (2) the process, deadlines, and other requirements for
21 submitting a cost benefit analysis;
22 required under this section.

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COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 311, 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:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 311 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 9, Nays 0.

 SENATE MOTION

Madam President: I move that Senate Bill 311 be amended to read as follows:

Page 1, delete lines 15 through 17, begin a new paragraph and insert:

"(c) In preparing a cost benefit analysis under this section, the OMB shall consider in its analysis any verified data provided voluntarily by interested parties and regulated persons. A cost benefit analysis prepared under this section is a public document, subject to the following:

(1) This subsection does not empower the OMB or an agency to require an interested party or a regulated person to provide any materials, documents, or other information in connection with a cost benefit analysis under this section. If an interested party or a regulated person voluntarily provides materials, documents, or other information to the OMB or an agency in connection with a cost benefit analysis under this section, the OMB or the agency, as applicable, shall ensure the adequate protection of any:

- (A) information that is confidential under IC 5-14-3-4; or**
- (B) confidential and proprietary business plans and other confidential information.**

The OMB and any agency involved in proposing the rule, or in administering the rule upon the rule's adoption, shall

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exercise all necessary caution to avoid disclosure of any confidential information supplied to the OMB or the agency by an interested party or a regulated person.

(2) The OMB shall make the cost benefit analysis and other related public documents available to interested parties and regulated persons at least thirty (30) days before presenting the cost benefit analysis to the governor and the administrative rules oversight committee under subsection (a)."

Page 2, delete lines 1 through 4.

Page 2, line 7, delete "This section applies to a rule that has been" and insert **"(a) This section applies to a rule that:**

(1) has been adopted under IC 4-22-2 or IC 13-14-9; and

(2) has taken effect;

after December 31, 2011."

Page 2, delete lines 8 through 11.

Page 2, line 17, delete "date on" and insert **"rule's effective date."**

Page 2, line 18, delete "which the rule was finally adopted."

Page 2, line 23, delete "date" and insert **"rule's effective date."**

Page 2, delete line 24.

Page 2, line 29, delete "final".

Page 3, delete lines 8 through 14, begin a new paragraph and insert:

"(e) In preparing a cost benefit analysis under this section, the OMB shall consider in its analysis any verified data provided voluntarily by interested parties and regulated persons. A cost benefit analysis prepared under this section is a public document, subject to the following:

(1) This subsection does not empower the OMB or an agency to require an interested party or a regulated person to provide any materials, documents, or other information. If an interested party or a regulated person voluntarily provides materials, documents, or other information to the OMB or an agency in connection with a cost benefit analysis under this section, the OMB or the agency, as applicable, shall ensure the adequate protection of any:

(A) information that is confidential under IC 5-14-3-4; or

(B) confidential and proprietary business plans and other confidential information.

The OMB and any agency involved in administering the rule shall exercise all necessary caution to avoid disclosure of any confidential information supplied to the OMB or the agency by an interested party or a regulated person.

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(2) The OMB shall make the cost benefit analysis and other related public documents available to interested parties and regulated persons at least thirty (30) days before presenting the cost benefit analysis to the governor and the committee under subsection (c)."

(Reference is to SB 311 as printed January 18, 2012.)

HERSHMAN

SENATE MOTION

Madam President: I move that Senate Bill 311 be amended to read as follows:

Page 1, line 17, delete "parties." and insert "**parties and from nonprofit corporations whose members may be affected by the proposed rule.**".

Page 2, line 2, after "parties" insert "**and to nonprofit corporations whose members may be affected by the proposed rule.**".

Page 2, line 7, after "13.1." insert "**(a)**".

Page 2, line 10, delete "IC 13-4-9" and insert "**IC 13-14-9;**".

Page 3, line 10, delete "parties." and insert "**parties and from nonprofit corporations whose members may be affected by the rule.**".

Page 3, line 12, after "parties" insert "**and to nonprofit corporations whose members may be affected by the rule.**".

(Reference is to SB 311 as printed January 18, 2012.)

HERSHMAN

SENATE MOTION

Madam President: I move that Engrossed Senate Bill 311, which is eligible for third reading, be returned to second reading for purposes of amendment.

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SENATE MOTION

Madam President: I move that Senate Bill 311 be amended to read as follows:

Page 1, line 17, delete "parties and regulated persons." and insert "**parties, regulated persons, and nonprofit corporations whose members may be affected by the proposed rule.**".

Page 2, line 21, delete "parties and" and insert "**parties, regulated persons, and nonprofit corporations whose members may be affected by the proposed rule**".

Page 2, line 22, delete "regulated persons".

Page 3, line 30, delete "parties and regulated persons." and insert "**parties, regulated persons, and nonprofit corporations whose members may be affected by the rule.**".

Page 4, line 7, delete "parties and" and insert "**parties, regulated persons, and nonprofit corporations whose members may be affected by the rule**".

Page 4, line 8, delete "regulated persons".

(Reference is to SB 311 as reprinted January 30, 2012.)

HERSHMAN

 COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred Senate Bill 311, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 3, delete "The" and insert "**Except as provided in subsection (e),** the".

Page 1, line 8, after "business." insert "**The OMB shall submit the cost benefit analysis to the committee in an electronic format under IC 5-14-6.**".

Page 2, line 16, before "The" insert "**If an agency has adopted rules to implement IC 5-14-3-4, interested parties and regulated persons must submit the information in accordance with the confidentiality rules adopted by the agency to ensure proper processing of confidentiality claims.**".

Page 2, between lines 27 and 28, begin a new paragraph and insert: "**(d) If the OMB or an agency is unable to obtain verified data for the cost benefit analysis described in subsection (c), the OMB**

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shall state in the cost benefit analysis which data were unavailable for purposes of the cost benefit analysis.

(e) If the OMB finds that a proposed rule is:

- (1) an adoption or incorporation by reference of a federal law, regulation, or rule that has no substantive effect on the scope or intended application of the federal law or rule; or
- (2) a technical amendment with no substantive effect on an existing Indiana rule;

the OMB may not prepare a cost benefit analysis of the rule under this section. The agency shall submit the proposed rule to the OMB with a statement explaining how the proposed rule meets the requirements of this subsection. If the OMB finds that the rule meets the requirements of this subsection, the OMB shall provide its findings to the governor and to the committee in an electronic format under IC 5-14-6. If the agency amends or modifies the proposed rule after the OMB finds that a cost benefit analysis may not be prepared for the rule, the agency shall resubmit the proposed rule to the OMB either for a new determination that the rule meets the requirements of this subsection, or for the OMB to prepare a cost benefit analysis of the rule under this section."

Page 2, between lines 33 and 34, begin a new paragraph and insert:

"(b) This section does not apply to a rule for which the OMB has not performed a cost benefit analysis under section 13(e) of this chapter."

Page 2, line 34, delete "(b)" and insert "(c)".

Page 2, line 37, delete "(c)" and insert "(d)".

Page 2, line 41, delete "(f)," and insert "(h)".

Page 3, line 4, after "date." insert "The OMB shall submit the cost benefit analysis to the committee in an electronic format under IC 5-14-6."

Page 3, line 5, delete "(d)" and insert "(e)".

Page 3, delete lines 27 through 29, begin a new line block indented and insert:

"(5) Any other information that the governor or the committee:

(A) requires with respect to a cost benefit analysis under this section; and

(B) requests in writing."

Page 3, line 30, delete "(e)" and insert "(f)".

Page 4, line 5, before "The" insert "If an agency has adopted rules to implement IC 5-14-3-4, interested parties and regulated persons must submit the information in accordance with the confidentiality

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rules adopted by the agency to ensure proper processing of confidentiality claims."

Page 4, line 14, delete "(c)." and insert "**(d)**".

Page 4, between lines 14 and 15, begin a new paragraph and insert:

"(g) If the OMB or an agency is unable to obtain verified data for the cost benefit analysis described in subsection (e), the OMB shall state in the cost benefit analysis which data were unavailable for purposes of the cost benefit analysis."

Page 4, line 15, delete "(f)" and insert "**(h)**".

and when so amended that said bill do pass.

(Reference is to SB 311 as reprinted February 1, 2012.)

MAHAN, Chair

Committee Vote: yeas 8, nays 0.

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