January 15, 2013

HOUSE BILL No. 1024

DIGEST OF HB 1024 (Updated January 15, 2013 11:35 am - DI 87)

Citations Affected: IC 4-3.

Synopsis: Private sector impacts of administrative rules. Provides that for the required cost benefit analysis prepared by the office of management and budget (OMB) for a proposed administrative rule, an analysis prepared after June 30, 2013, must include a private sector employment impact statement that sets forth the OMB's estimate of the economic impact of the proposed rule on private sector employment in Indiana. Specifies the particular impacts that the OMB must identify in the statement. Provides that if the OMB determines that the preparation of a private sector employment impact statement is unnecessary or impractical with respect to a particular proposed rule, the OMB may decline to prepare a statement with respect to the rule. Provides that for the required cost benefit analysis prepared by the OMB for the three year period following an adopted rule's effective date, an analysis prepared after June 30, 2013, must include: (1) the private sector employment impact statement, if any, prepared by the OMB before the rule's adoption; and (2) the actual economic impact of the adopted rule on private sector employment during the three year period covered by the analysis.

Effective: July 1, 2013.

Koch, Harman, Truitt

January 7, 2013, read first time and referred to Committee on Government and Regulatory Reform.
January 15, 2013, reported — Do Pass.

C o p y

January 15, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

C o p y

HOUSE BILL No. 1024

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:

SECTION 1. IC 4-3-22-13, AS AMENDED BY P.L.131-2012, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 13. **(a) As used in this section, "committee" refers to the administrative rules oversight committee established by IC 2-5-18-4.**

~~(a)~~ **(b)** Except as provided in subsection ~~(c),~~ **(g),** the OMB shall perform a cost benefit analysis upon each proposed rule and provide to:

(1) the governor; and

(2) the ~~administrative rules oversight~~ committee; ~~established under IC 2-5-18;~~

an assessment of the rule's effect on Indiana business. The OMB shall submit the cost benefit analysis to the committee in an electronic format under IC 5-14-6.

~~(b)~~ **(c)** After June 30, 2005, the cost benefit analysis performed by the OMB under this section with respect to any proposed rule that has ~~an~~ **a total estimated economic** impact **(as defined in IC 4-22-2-28)** of at least five hundred thousand dollars ($500,000) **on all regulated**

persons shall replace and be used for all purposes under IC 4-22-2 in lieu of the fiscal analysis previously performed by the legislative services agency under ~~IC 4-22-2.~~ **IC 4-22-2-28.**

(d) This subsection applies to a cost benefit analysis prepared by the OMB under this section after June 30, 2013. As used in this subsection, "fully implemented", with respect to a proposed rule, has the meaning set forth in IC 4-22-2-28(g). A cost benefit analysis to which this subsection applies must include a private sector employment impact statement that includes an estimate by the OMB of the economic impact of the proposed rule on private sector employment in Indiana, including self-employment and areas for potential employment growth. In the private sector employment impact statement required under this subsection, the OMB shall describe and quantify, to the extent possible, the nature of the impact the proposed rule will have on private sector jobs and employment opportunities in Indiana, and shall identify the following with respect to the proposed rule:

(1) The categories or industry sectors, including the manufacturing and agricultural sectors, if applicable, of jobs and employment opportunities affected by the proposed rule.

(2) Within each category or industry sector identified under subdivision (1), the number of jobs or potential job opportunities affected by the proposed rule.

(3) The regions of Indiana affected by the proposed rule.

(4) The impact of the rule on the expansion or retention of existing businesses or facilities.

(5) The total estimated economic impact (as defined in IC 4-22-2-28(a)) of the proposed rule with respect to private sector employment in Indiana, beginning with the first twelve (12) month period after the rule is fully implemented.

In preparing the estimates required under subdivisions (1) through (5), the OMB may use actual or forecasted data and may consider the actual and anticipated effects of inflation and deflation. The OMB shall describe any assumptions made and any data used in preparing a private sector employment impact statement under this subsection. However, if the OMB determines that the preparation of a private sector employment impact statement under this subsection is unnecessary or impractical with respect to a particular proposed rule, the OMB may decline to prepare a private sector employment impact statement with respect to that rule. If the OMB declines to prepare a private sector employment impact statement for a proposed rule, the OMB must include, in

C o p y

the cost benefit analysis prepared under this section, a statement explaining the OMB's determination that the preparation of a private sector employment impact statement under this subsection is unnecessary or impractical with respect to the rule.

~~(c)~~ **(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, regulated persons, and nonprofit corporations whose members may be affected by the proposed rule. 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.

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

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

~~(d)~~ **(f)** If the OMB or an agency is unable to obtain verified data for the cost benefit analysis described in ~~subsection (c),~~ **this section,** the OMB shall state in the cost benefit analysis which data were unavailable for purposes of the cost benefit analysis.

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

C o p y

(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.

SECTION 2. IC 4-3-22-13.1, AS ADDED BY P.L.131-2012, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 13.1. (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.

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

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

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

(1) the governor; and

(2) the committee;

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

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

(1) The cost benefit analysis for the rule, **if any,** prepared under

C o p y

section 13 of this chapter before the rule's adoption, including the following:

(A) The information required by Financial Management Circular #2010-4.

(B) The estimate of the primary and direct benefits of the rule, including the impact on:

(i) consumer protection;

(ii) worker safety;

(iii) the environment; and

(iv) business competitiveness;

as determined before the rule's adoption.

(C) The estimate of the secondary or indirect benefits of the rule and the explanation of how the conduct regulated by the rule is linked to the primary and secondary benefits, as determined before the rule's adoption.

(D) The estimate of any cost savings to regulated persons (including individuals and businesses) as a result of the rule, including any savings from:

(i) a change in an existing requirement; or

(ii) the imposition of a new requirement;

as determined before the rule's adoption.

(E) For a cost benefit analysis prepared by the OMB under section 13 of this chapter after June 30, 2013, the private sector employment impact statement, if any, prepared by the OMB under section 13(d) of this chapter before the rule's adoption.

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

(3) A comparison of:

(A) the cost benefit analysis for the rule prepared under section 13 of this chapter before the rule's implementation, including the information specified in subdivision (1); and

(B) the actual costs and benefits of the rule during the first three (3) years of the rule's implementation, including the following:

(i) Any actual primary and direct benefits of the rule, including the rule's impact on consumer protection, worker safety, the environment, and business competitiveness.

(ii) Any actual secondary or indirect benefits of the rule and an explanation of how the conduct regulated by the rule is linked to the primary and secondary benefits.

(iii) Any actual cost savings to regulated persons (including

C o p y

individuals and businesses) as a result of the rule, including any savings from a change in an existing requirement or from the imposition of a new requirement.

(iv) For a rule for which the cost benefit analysis required under section 13 of this chapter was prepared by the OMB after June 30, 2013, or for which a cost benefit analysis was not prepared because of a determination that was made by the OMB under section 13(g) of this chapter after June 30, 2013, the actual economic impact of the rule on private sector employment in Indiana during the three (3) year period described in this section, including the information specified in section 13(d)(1) through 13(d)(5) of this chapter, regardless of whether the OMB declined to prepare a private sector employment impact statement with respect to the rule if a cost benefit analysis was prepared for the rule.

If a cost benefit analysis was not prepared by the OMB under section 13 of this chapter before the rule's adoption because of a determination by the OMB before the rule's adoption that the rule met the requirements of section 13(g) of this chapter, the OMB must only provide the information specified in clause (B).

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

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

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

(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.

(f) In preparing a cost benefit analysis under this section, the OMB shall consider in its analysis any verified data provided voluntarily by interested parties, regulated persons, and nonprofit corporations whose members may be affected by the rule. 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,

C o p y

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.

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. 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.

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

(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.

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

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

(2) the process, deadlines, and other requirements for submitting a cost benefit analysis;

required under this section.

C o p y

COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1024, 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.

MAHAN, Chair

Committee Vote: yeas 13, nays 0.

C o p y