

**CONFERENCE COMMITTEE REPORT
DIGEST FOR EHB 1583**

Citations Affected: IC 2-5-18; IC 4-22-2; IC 7.1-3-17.7-5.

Synopsis: Review of administrative rules. Conference committee report for EHB 1583. Sets forth procedures for the appointment of: (1) the members of the administrative rules oversight committee (committee); and (2) the committee's chair. Requires economic impact information related to a rule that is prepared by an agency to be submitted to the committee. Requires the fiscal impact statement prepared by the office of management and budget (OMB) for proposed rules with an economic impact exceeding \$500,000 to be submitted to the committee. Requires an agency that recalls and then readopts a rule that required a fiscal impact statement from OMB to resubmit sufficient information to OMB for OMB to determine whether the initial fiscal impact statement needs to be revised. Authorizes the committee to review the fiscal impact of rules that have an economic impact of \$500,000 or less. Corrects a technical error in HEA 1055-2013 resulting from the failure to include an emergency rulemaking provision that was subject to recodification in HEA 1055-2013. **(This conference committee report does the following: (1) Requires economic impact information related to a rule that is prepared by an agency under the requirements of any law to be submitted to the committee. (2) Removes a provision that prohibited the attorney general from approving a rule if the committee did not receive a cost benefit analysis from OMB. (3) Corrects a technical error in HEA 1055-2013 resulting from the failure to include an emergency rulemaking provision that was subject to recodification in HEA 1055-2013.)**

Effective: Upon passage; July 1, 2013.

Adopted Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill No. 1583 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
2 SECTION 1. IC 2-5-18-5 IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The committee consists
4 of the following eight (8) members of the general assembly:
5 (1) Four (4) members of the house of representatives appointed by
6 the speaker of the house of representatives. Not more than two (2)
7 members appointed under this subdivision may be members of the
8 same political party.
9 (2) Four (4) members of the senate appointed by the president pro
10 tempore of the senate. Not more than two (2) members appointed
11 under this subdivision may be members of the same political
12 party.
13 (b) The appointing authorities shall make the appointments **under**
14 **subsection (a) as follows:**
15 (1) **In 2013:**
16 (A) **after the adjournment sine die of the first regular**
17 **session of the one hundred eighteenth general assembly;**
18 **and**
19 **(B) before July 1, 2013.**
20 (2) **In each even-numbered year, beginning in 2014:**
21 (A) **after the election of the general assembly; and**

1 **(B)** before December 1. of each even-numbered year. The
2 appointments remain

3 **Subject to subsection (c), an appointment made under this**
4 **subdivision remains** in effect until the election of the next
5 general assembly **and a subsequent appointment under this**
6 **subdivision.**

7 (c) Any vacancy occurring on the committee must be filled by the
8 appointing authority for the unexpired term.

9 SECTION 2. IC 2-5-18-6 IS AMENDED TO READ AS FOLLOWS
10 [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) The speaker of the house
11 of representatives shall appoint a member of the committee to be the
12 chair of the committee ~~during the first regular session of each general~~
13 ~~assembly. The member appointed to be chair by the speaker serves as~~
14 ~~chair until the beginning of the second regular session of that general~~
15 ~~assembly. for a term beginning on July 15 in an odd-numbered year~~
16 **and ending on July 14 in an even-numbered year.**

17 (b) The president pro tempore of the senate shall appoint a member
18 of the committee to be chair of the committee ~~during the second regular~~
19 ~~session of each general assembly. The member appointed to be chair~~
20 ~~by the president pro tempore serves as chair until the election of the~~
21 ~~next general assembly. for a term beginning on July 15 in an~~
22 ~~even-numbered year and ending on July 14 in an odd-numbered~~
23 ~~year.~~

24 (c) **A vacancy in the position of chair of the committee resulting**
25 **from an intervening general election or any other reason shall be**
26 **filled for the remainder of the unexpired term by the appointing**
27 **authority for that term of office.**

28 ~~(c)~~ (d) The committee shall meet to organize on the call of the chair.
29 **In calendar year 2013, the organizational meeting must be held not**
30 **later than July 15, 2013. After calendar year 2013, the**
31 **organizational meeting must be held** not later than December 15 of
32 each **even-numbered** year. The committee shall meet at the call of the
33 chair.

34 SECTION 3. IC 2-5-18-8 IS AMENDED TO READ AS FOLLOWS
35 [EFFECTIVE JULY 1, 2013]: Sec. 8. (a) The committee shall receive
36 and may, at its discretion, review a complaint filed by a person
37 regarding a rule or practice of an agency.

38 (b) **Subject to IC 4-22-2-46,** the committee may, **on its own**
39 **initiative,** review an agency rule **or proposed rule,** an agency practice,
40 or a failure of an agency to adopt a rule.

41 (c) The committee may recommend that:

42 **(1) a rule or proposed rule** be modified, repealed, or adopted, **as**
43 **applicable; or**

44 **(2) in the case of a proposed rule reviewed under**
45 **IC 4-22-2-46, the proposed rule be approved or disapproved**
46 **by the governor.**

47 (d) When appropriate, the committee shall prepare and arrange for
48 the introduction of a bill to clarify the intent of the general assembly
49 when the general assembly enacted a law or to correct the
50 misapplication of a law by an agency.

51 SECTION 4. IC 4-22-2-3.2 IS ADDED TO THE INDIANA CODE

1 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
2 1, 2013]: **Sec. 3.2. As used in this chapter, "administrative rules
3 oversight committee" refers to the administrative rules oversight
4 committee established by IC 2-5-18-4.**

5 SECTION 5. IC 4-22-2-20, AS AMENDED BY P.L.123-2006,
6 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2013]: Sec. 20. (a) Whenever an agency submits a rule to the
8 publisher, the attorney general, **the administrative rules oversight
9 committee established by IC 2-5-18-4**, or the governor under this
10 chapter, the agency shall submit the rule in the form of a written
11 document that:

- 12 (1) is clear, concise, and easy to interpret and to apply; and
- 13 (2) uses the format, numbering system, standards, and techniques
14 established under section 42 of this chapter.

15 (b) After June 30, 2006, all documents submitted to the publisher
16 under this chapter must be submitted electronically in the format
17 specified by the publisher.

18 **(c) Except as otherwise permitted under section 21 of this
19 chapter, after June 30, 2013, all documents submitted by the office
20 of management and budget or an agency proposing or adopting a
21 rule to the members of the administrative rules oversight
22 committee must be submitted in an electronic format under
23 IC 5-14-6.**

24 SECTION 6. IC 4-22-2-28, AS AMENDED BY P.L.110-2010,
25 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
26 JULY 1, 2013]: Sec. 28. (a) The following definitions apply throughout
27 this section:

- 28 (1) "Ombudsman" refers to the small business ombudsman
29 designated under IC 5-28-17-5.
- 30 (2) "Total estimated economic impact" means the **direct** annual
31 economic impact of a rule on all regulated persons after the rule
32 is fully implemented under subsection (g).

33 (b) The ombudsman:

- 34 (1) shall review a proposed rule that:
 - 35 (A) imposes requirements or costs on small businesses (as
36 defined in IC 4-22-2.1-4); and
 - 37 (B) is referred to the ombudsman by an agency under
38 IC 4-22-2.1-5(c); and
- 39 (2) may review a proposed rule that imposes requirements or
40 costs on businesses other than small businesses (as defined in
41 IC 4-22-2.1-4).

42 After conducting a review under subdivision (1) or (2), the ombudsman
43 may suggest alternatives to reduce any regulatory burden that the
44 proposed rule imposes on small businesses or other businesses. The
45 agency that intends to adopt the proposed rule shall respond in writing
46 to the ombudsman concerning the ombudsman's comments or
47 suggested alternatives before adopting the proposed rule under section
48 29 of this chapter.

49 (c) Subject to subsection ~~(f)~~ (e) and not later than fifty (50) days
50 before the public hearing **for a proposed rule** required by section 26

1 of this chapter, an agency shall submit a **the** proposed rule to the office
 2 of management and budget for a review under subsection (d), if the
 3 agency proposing the rule determines that the rule will have a total
 4 estimated economic impact greater than five hundred thousand dollars
 5 (\$500,000) on all regulated persons. In determining the total estimated
 6 economic impact under this subsection, the agency shall consider any
 7 applicable information submitted by the regulated persons affected by
 8 the rule. To assist the office of management and budget in preparing
 9 the fiscal impact statement required by subsection (d), the agency shall
 10 submit, along with the proposed rule, the data used and assumptions
 11 made by the agency in determining the total estimated economic
 12 impact of the rule.

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

- 21 (1) the state; and
- 22 (2) all persons regulated by the proposed rule.

23 The fiscal impact statement must contain the total estimated economic
 24 impact of the proposed rule and a determination concerning the extent
 25 to which the proposed rule creates an unfunded mandate on a state
 26 agency or political subdivision. The fiscal impact statement is a public
 27 document. The office of management and budget shall make the fiscal
 28 impact statement available to interested parties upon request **and to the**
 29 **agency proposing the rule.** The agency proposing the rule shall
 30 consider the fiscal impact statement as part of the rulemaking process
 31 and shall provide the office of management and budget with the
 32 information necessary to prepare the fiscal impact statement, including
 33 any economic impact statement prepared by the agency under
 34 IC 4-22-2.1-5. The office of management and budget may also receive
 35 and consider applicable information from the regulated persons
 36 affected by the rule in preparation of the fiscal impact statement.

37 (e) With respect to a proposed rule subject to IC 13-14-9:

- 38 (1) the department of environmental management shall give
 39 written notice to the office of management and budget of the
 40 proposed date of preliminary adoption of the proposed rule not
 41 less than sixty-six (66) days before that date; and
- 42 (2) the office of management and budget shall prepare the fiscal
 43 impact statement referred to in subsection (d) not later than
 44 twenty-one (21) days before the proposed date of preliminary
 45 adoption of the proposed rule.

46 (f) In determining whether a proposed rule has a total estimated
 47 economic impact greater than five hundred thousand dollars
 48 (\$500,000), the agency proposing the rule shall consider the impact of
 49 the rule on any regulated person that already complies with the
 50 standards imposed by the rule on a voluntary basis.

- 1 (g) For purposes of this section, a rule is fully implemented after:
 2 (1) the conclusion of any phase-in period during which:
 3 (A) the rule is gradually made to apply to certain regulated
 4 persons; or
 5 (B) the costs of the rule are gradually implemented; and
 6 (2) the rule applies to all regulated persons that will be affected
 7 by the rule.

8 In determining the total estimated economic impact of a proposed rule
 9 under this section, the agency proposing the rule shall consider the
 10 annual economic impact on all regulated persons beginning with the
 11 first twelve (12) month period after the rule is fully implemented. The
 12 agency may use actual or forecasted data and may consider the actual
 13 and anticipated effects of inflation and deflation. The agency shall
 14 describe any assumptions made and any data used in determining the
 15 total estimated economic impact of a rule under this section.

16 **(h) This subsection applies to any proposed rule submitted**
 17 **under this section or section 40 of this chapter to the office of**
 18 **management and budget after June 30, 2013. An agency shall**
 19 **provide the administrative rules oversight committee with any**
 20 **analysis, data, and description of assumptions submitted to the**
 21 **office of management and budget under this section or section 40**
 22 **of this chapter at the same time the agency submits the information**
 23 **to the office of management and budget. The office of management**
 24 **and budget shall provide the administrative rules oversight**
 25 **committee with any fiscal impact statement and related supporting**
 26 **documentation prepared by the office of management and budget**
 27 **under this section or section 40 of this chapter at the same time the**
 28 **office of management and budget provides the fiscal impact**
 29 **statement to the agency proposing the rule. Information submitted**
 30 **under this subsection must identify the rule to which the**
 31 **information is related by document control number assigned by the**
 32 **publisher.**

33 **(i) This subsection applies to any analysis completed after June**
 34 **30, 2013, to comply with a statute described in this subsection. An**
 35 **agency shall provide the administrative rules oversight committee**
 36 **with any economic impact or fiscal impact statement, including any**
 37 **supporting data, studies, or analysis, prepared for a rule proposed**
 38 **by the agency or subject to readoption by the agency to comply**
 39 **with:**

- 40 (1) a requirement in section 19.5 of this chapter to minimize
 41 the expenses to regulated entities that are required to comply
 42 with the rule;
 43 (2) a requirement in section 24 of this chapter to publish a
 44 justification of any requirement or cost that is imposed on a
 45 regulated entity under the rule;
 46 (3) a requirement in IC 4-22-2.1-5 to prepare a statement that
 47 describes the annual economic impact of a rule on all small
 48 businesses after the rule is fully implemented;
 49 (4) a requirement in IC 4-22-2.5-3.1 to conduct a review to
 50 consider whether there are any alternative methods of
 51 achieving the purpose of the rule that are less costly or less

1 **intrusive, or that would otherwise minimize the economic**
 2 **impact of the proposed rule on small businesses;**

3 **(5) a requirement in IC 13-14-9-3 or IC 13-14-9-4 to publish**
 4 **information concerning the fiscal impact of a rule or**
 5 **alternatives to a rule subject to these provisions; or**

6 **(6) a requirement under any other law to conduct an analysis**
 7 **of the cost, economic impact, or fiscal impact of a rule;**

8 **regardless of whether the total estimated economic impact of the**
 9 **proposed rule is more than five hundred thousand dollars**
 10 **(\$500,000), as soon as practicable after the information is**
 11 **prepared. Information submitted under this subsection must**
 12 **identify the rule to which the information is related by document**
 13 **control number assigned by the publisher.**

14 SECTION 7. IC 4-22-2-40, AS AMENDED BY P.L.123-2006,
 15 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2013]: Sec. 40. (a) At any time before a rule is accepted for
 17 filing by the publisher under section 35, 37.1, or 38 of this chapter, the
 18 agency that adopted the rule may recall it. A rule may be recalled
 19 regardless of whether: it

20 **(1) the rule** has been disapproved by the attorney general under
 21 section 32 of this chapter;

22 **(2) the administrative rules oversight committee has**
 23 **recommended under section 46 of this chapter that the**
 24 **governor disapprove the rule; or**

25 **(3) the rule has been** disapproved by the governor under section
 26 34 of this chapter.

27 (b) Sections 24 through 38 of this chapter do not apply to a recall
 28 action under this section. However, the agency shall distribute a notice
 29 of its recall action to the publisher for publication in the Indiana
 30 Register. Sections 24 and 26 of this chapter do not apply to a
 31 readoption action under subsection (c).

32 (c) After an agency recalls a rule, the agency may reconsider its
 33 adoption action and adopt an identical rule or a revised rule. However,
 34 if sections 24 through 36 of this chapter apply to the recalled rule, the
 35 readopted rule must comply with the requirements under section 29 of
 36 this chapter.

37 (d) The recall of a rule under this section voids any approval given
 38 after the rule was adopted and before the rule was recalled.

39 (e) If a rule is:

40 (1) subject to sections 31 and 33 of this chapter;

41 (2) recalled under subsection (a); and

42 (3) readopted under subsection (c);

43 the agency shall resubmit the readopted version of the recalled rule to
 44 the attorney general and the governor for approval. The attorney
 45 general and the governor have the full statutory period to approve or
 46 disapprove the readopted rule. **If the recalled rule was submitted to**
 47 **the office of management and budget under section 28 of this**
 48 **chapter, the agency shall resubmit the readopted version of a**
 49 **recalled rule to the office of management and budget with**
 50 **sufficient information for the office of management and budget to**
 51 **evaluate whether its initial fiscal impact statement under section 28**

1 **of this chapter needs to be revised. The office of management and**
2 **budget shall revise a fiscal impact statement under section 28 of**
3 **this chapter if the fiscal impact of the readopted rule is**
4 **substantially different from the recalled rule.** The agency also shall
5 comply with any other applicable approval requirement provided by
6 statute.

7 (f) The readopted version of a recalled rule is effective only after the
8 agency has complied with section 35, 37.1, or 38 of this chapter.

9 SECTION 8. IC 4-22-2-46 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 46. (a) The
11 administrative rules oversight committee shall carry out a program to
12 review each rule adopted under this chapter (including a rule subject
13 to IC 13-14-9):

14 (1) that is required to be submitted to the attorney general
15 under IC 4-22-2-31 and submitted to the governor under
16 IC 4-22-2-33; and

17 (2) ~~has a fiscal~~ that the agency proposing the rule or the office
18 of management and budget determines has a total estimated
19 economic impact of more than five hundred thousand dollars
20 (\$500,000).

21 (b) **The administrative rules oversight committee may review**
22 **under this section any proposed or adopted rule not described in**
23 **subsection (a) for the purposes described in subsection (c)(1)**
24 **through (c)(4).**

25 (c) **The administrative rules oversight committee shall review a**
26 **rule under this section** for the following:

27 (1) **Direct** economic impact.

28 (2) Compliance with the intent of the general assembly.

29 (3) The extent to which the rule creates an unfunded mandate on
30 any state agency or political subdivision.

31 (4) The extent to which the rule complies with the standards in
32 IC 4-22-2-19.5.

33 (d) **In the case of a proposed rule reviewed under this section,**
34 **the administrative rules oversight committee may recommend that**
35 **the proposed rule be approved or disapproved by the governor or**
36 **take any other action permitted under IC 2-5-18.**

37 SECTION 9. IC 7.1-3-17.7-5 IS AMENDED TO READ AS
38 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. The commission
39 may adopt rules under IC 4-22-2, **including emergency rules adopted**
40 **in the manner provided under IC 4-22-2-37.1**, concerning the
41 following for a horse track permit or a satellite facility permit:

42 (1) Issuance.

43 (2) Scope.

44 (3) Permit fee.

45 (4) Expiration.

46 (5) Revocation and suspension.

47 SECTION 10. **An emergency is declared for this act.**

(Reference is to EHB 1583 as reprinted April 9, 2013.)

Conference Committee Report
on
Engrossed House Bill 1583

Signed by:

Representative Harman
Chairperson

Senator Yoder

Representative Pierce

Senator Lanane

House Conferees

Senate Conferees