

LSA Doc. # 10-481, Fiscal Impact Statement

Proposed Amendments and Additions to 290 IAC 1-1-1 through 290 IAC 1-2-8, State Disaster Relief Fund

Rule Summary: The Proposed Administrative Rules which are attached for your consideration amends 290 IAC 1-1-1, 1-1-2, 1-1-3, 1-1-4, 1-1-5 and 1-1-6. They also add 290 IAC 1-1-0.5, 1-1-2.5, 1-1-7 and 290 IAC 1-2-1 through 1-2-8. This proposed Administrative Rule will replace the Emergency Administrative Rule which is currently in effect. It is proposed to become effective 30 days after filing with the publisher.

Background: IC 4-22-2-28 requires an agency to submit a proposed rule to the Office of Management and Budget (OMB) for a review, if the agency proposing the rule determines that the rule will have a total estimated economic impact greater than five hundred thousand dollars (\$500,000) on all regulated persons. To assist OMB in preparing the fiscal impact statement, the agency is required to 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. The agency must submit this to OMB not later than 50 days before the public hearing. The OMB response must be provided in writing to the agency/board/commission not less than 5 days before the public hearing.

Financial Management Circular #2006-2 requires agencies submitting proposed administrative rules to prepare and submit to the State Budget Agency a cost-benefit analysis on the promulgation of any new rules. According to FMC #2006-2, this cost-benefit analysis 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 for rules involving a fiscal impact of greater than \$500,000. FMC #2006-2 requires the cost benefit analysis to contain a statement of need, an evaluation of benefits and costs and a determination by the agency of whether the direct and indirect benefits are likely to justify those costs.

In the last 15 years, Indiana has experienced numerous disasters of a magnitude that resulted in Presidential Disaster Declarations. During that period, some Indiana counties have been involved in as many as 10 such declarations. The cost of these natural catastrophes has exceeded \$100 million. Federal governmental assistance to local units of government between 1990 and 2004 equaled more than \$84 million. Since September 2004, FEMA has reimbursed Indiana and its citizens more than \$62.4 million. However, all of this funding was available because the cause of the destruction was determined to rise to the level of a Presidential Disaster Declaration. However, Indiana has suffered many other natural disasters that did not reach the threshold of a federal declaration. Unless there is a Presidential Disaster Declaration, there has been little that the state could offer to communities and citizens to restore what was destroyed or damaged by those events. In 1999, the Indiana General Assembly created the State Disaster Relief Fund (IC 10-14-4-5) to assist municipalities in repairing or replacing infrastructure elements affected by these non-federally declared disasters. Rules to implement the program were adopted (290 IAC 1), but due to fiscal constraints, no appropriations were made to the fund. In 2006, HEA 1099 appropriated \$1,000,000 from the public safety fees, collected under IC 22-11-14-12 into the State Disaster Relief Fund. That amount was deposited into the fund on

1/11/07. In 2007, the authorizing statute for the State Disaster Relief Fund was amended by making individuals eligible for financial assistance. In 2008, the authorizing statute was again amended, at the request of the Indiana Department of Homeland Security, to make the criteria for an individual to be eligible more practical and less problematic.

Data Used: The data used to estimate the economic benefits and costs of the rule came from the US Small Business Administration. The US SBA had one declared disaster in Indiana in 2008 and two declared disasters in Indiana in 2009. If a Presidential Declaration of a major disaster is granted, the Indiana Department of Homeland Security does not seek a declaration by the US SBA, since the FEMA benefits are greater.

Assumptions Made: In compiling this economic impact statement, it is assumed that the number of US SBA applicants who are denied will be no greater than 85 in any given year. Since we only have two years of data from which to make this estimate, this assumption may or may not prove to be accurate.

Statement of Need:

An Administrative Rule is required to implement IC 10-14-4-6, as amended by P.L. 110-2009. It authorized the Department of Homeland Security to adopt emergency rules to implement IC 10-14-4-6, “as amended by this act, in the manner provided for the adoption of emergency rules under IC 4-22-2-37.1.” It stated that an emergency rule so adopted expires on the earlier of the date the Department adopts permanent rules under IC 4-22-2 to replace the emergency rules or July 1, 2011.

The proposed administrative rule also will serve a public need, to provide financial assistance from the state to individuals whose property is damaged by a disaster event, but who are not eligible for any assistance from the Federal Emergency Management Agency or from the United States Small Business Administration. With the addition of Individual Assistance financial assistance, it also was necessary to apportion the State Disaster Relief Fund among amounts available for Public Assistance, Individual Assistance and the amount which remains in the State Disaster Relief Fund under 2006 House Enrolled Act 1099. Section 20 of HEA 1099 deposited \$1,000,000 into the State Disaster Relief Fund and specified the purposes for which the moneys may be used. Since the amount of funds in the State Disaster Relief Fund is finite and the amounts due to be paid to applicants is indeterminate, it is also necessary to describe the method by which limited funds will be apportioned between the various claimants.

The legislature’s policy rationale for amending the governing statute was to provide some financial assistance from the existing State Disaster Relief Fund to those persons who suffer economic damage to their homes in a declared disaster and who are not insured and are not eligible for any other government assistance. It is not possible to estimate, with any degree of certainty, the number of individuals who may be affected by the proposed rule each year. The number of persons who would have been impacted by the proposed rules, had they been in effect during calendar year 2009, is 52 persons. The US Small Business Administration declared two disasters in Indiana in CY2009, SBA #11870 and SBA # 11926. For SBA # 11870, 2 applications were denied. For SBA #11926, 50 applications were denied. For calendar year

2008, the number of persons who would have been impacted by the proposed rules is 19. The US Small Business Administration declared one disaster in Indiana in CY2008, SBA #11235. For it, 19 applications were denied. Having no reason to collect this data for previous years, the Indiana Department of Homeland Security cannot report the number of estimated individual claimants against the State Disaster Relief Fund prior to 2008.

The amount payable to any single individual will depend upon the amount of his or her documented loss to the primary residence or eligible personal property. 290 IAC 2-1 limits the amount of loss which may be compensated to an individual to be not less than \$500 and not more than \$5,000.

According to the US Small Business Administration, they declared one disaster in Indiana in 2008 (SBA #11235) and it included 5 Indiana counties. 19 applications for loans from the individual disaster victims were denied. In the unlikely event that each of the qualifying individuals who suffered eligible damage in 2008 was to qualify for the \$5,000 maximum amount of financial assistance, the amount paid out from the State Disaster Relief Fund would be \$95,000.00. In the unlikely event that each of the qualifying individuals who suffered eligible damage in 2008 were only to qualify for the \$500 minimum amount of financial assistance, the amount to be paid from the State Disaster Relief Fund would be \$9,500.00. These two figures therefore represent a reasonable approximation of the floor and ceiling amounts likely to cause a reduction in the State Disaster Relief Fund in 2008, had the proposed administrative rules been in effect during 2008.

According to the US Small Business Administration, they declared two disasters in Indiana in 2009 (SBA #11870 and SBA # 11926. The first included 1 county and the second included 3 counties. When combined, 85 applications for loans from the individual disaster victims were denied. In the unlikely event that each of the qualifying individuals who suffered eligible damage in 2009 were to qualify for the maximum amount of financial assistance, the amount of loss to the State Disaster Relief Fund would be \$260,000.00. In the unlikely event that each of the qualifying individuals who suffered eligible damage in 2009 were only to qualify for the minimum amount of financial assistance, the amount by which the State Disaster Relief Fund would be reduced is \$26,000.00. These two figures therefore represent a reasonable approximation of the floor and ceiling amounts likely to cause a reduction in the State Disaster Relief Fund in 2009, had the proposed administrative rules been in effect during 2009.

The number of Indiana persons who were denied SBA loans in 2008 was 19. The number of Indiana persons who were denied SBA loans in 2009 was 85. Assuming that the number of individuals who would be eligible for financial assistance from the State Disaster Relief Fund in 2010 or in any future year is the average of those two numbers, 52 is a fair estimate of the average number of such individuals who may be eligible for financial assistance from the State Disaster Relief Fund in 2010 or in any future year. 52 times the \$500 floor renders a minimum estimate of \$26,000.00. 52 times the \$5000 ceiling renders a maximum estimate of \$260,000.00. To date, the only payment from the State Disaster Relief Fund to a unit of government was a payment to the City of Nappanee in the sum of \$198,423.35, made on 1/23/08.

Under IC 10-14-4-5, the agency may provide financial assistance in response to a disaster only from the balance in the fund that is unobligated on the date the disaster occurs. Once the money in the State Disaster Relief Fund all has been obligated, no further financial assistance from the fund is possible until the Fund again has a positive un-obligated balance. The State Disaster Relief Fund may or may not receive an appropriation from the Indiana General Assembly in any year. The Public Safety Fee that was authorized under 2006 HEA 1099 provided that the first \$2,000,000 in Public Safety Fees generated by the sale of Fireworks will be allocated for the purpose of Public Safety Training. Any Public Safety Fees generated in excess of \$2,000,000 in a given year are allocated to the State Disaster Relief Fund. On June 30, 2007, the amount of Public Safety Fees allocated to the State Disaster Relief Fund was \$1,706,406.36. This included public safety fees received by the State from 7/1/06 to 6/30/07. On June 30, 2008 the sum deposited in the State Disaster Relief Fund was \$993,124.18. This included public safety fees received by the State from 7/1/07 to 6/30/08. On October 31, 2008, the additional sum of \$201,254.41 was deposited from fireworks sales. The current balance in the State Disaster Relief Fund is \$3,299,852.78.

Outreach/Public Participation

The proposed changes to the existing administrative rules are due entirely to the changes in the governing statutes. HB 1428 was considered at open meetings of the Senate Homeland Security, Transportation and Veterans Affairs Committee and the House Veterans Affairs and Public Safety Committee.

Impact on State and Local Government

The subject matter of the proposed rule is limited primarily to applications by individuals and therefore should have very little impact on local governments. The only state agency expected to be impacted by the amended rules is the Indiana Department of Homeland Security, which should see an increase in staff hours dedicated to administering the State Disaster Relief Fund. The one feature of the proposed rule that may impact local governments is to be found in 290 IAC 1-1-2.5, Grant Awards. Since the State Disaster Relief Fund is being opened to claims from individuals, it is possible that the amount available to local units of government for damage to their infrastructure will be reduced, in the event of a series of medium sized disasters which have the effect of draining the balance in the State Disaster Relief Fund below the amount necessary to pay all claimants the full amount of their claims.

Economic Impact

The fiscal impact analysis is based on data received from the Individual Assistance and Emergency Preparedness Specialist, who works within the Response and Recovery Division of the Indiana Department of Homeland Security.

Evaluation of Costs and Benefits

1. **Direct Benefits:** IDHS has estimated the primary and direct benefits of the

proposed rule. These include, where applicable, the impact on consumer protection, worker safety, and business competitiveness. The agency finds that the primary direct benefit of the proposed rules will be to allow financial assistance to be provided to eligible Indiana citizens who have suffered a loss of or damage to their primary residence in a disaster event. Another key direct benefit will be to provide financial assistance to an eligible Indiana citizen who has suffered damage to essential personal property such as an automobile needed to get to and from work, tools of persons employed in a trade and essential appliance such as a stove or refrigerator.

2. **Indirect Benefits:** IDHS has estimated the secondary or indirect benefits of the proposed rule. The agency finds that the key secondary or indirect benefit of the proposed rules will be to provide needed guidance to IDHS and to potential applicants about the process of applying for financial assistance from the State Disaster Relief Fund. The rules will advance the purpose of providing an easily understood procedure for IDHS to follow in processing and payment of financial assistance to persons who are found to be eligible and for adjudicating appeals from those persons who are found to be ineligible for, or to be eligible for a lesser amount than they hoped. Another key indirect benefit will be in providing a positive economic benefit to the local business community who will be able to sell the applicant a replacement car or appliance or who will be hired to repair the applicant's home or vehicle.

3. **Link of Actions to Benefits:** IDHS has estimated how the actions required by the rule are linked to the primary and secondary benefits identified above. The actions required by the rule are to be performed by IDHS in processing the applications for financial assistance by the Small Business Administration in providing data to IDHS in permitting it to process the applications for financial assistance and by the applicants themselves in applying for financial assistance from the State Disaster Relief Fund. Each of these actions is directly linked to the production of the benefits as enumerated above.

4. **Costs:** IDHS has estimated the compliance costs for individuals and businesses, including the costs of fees, new equipment or supplies, increased labor and training, education and supervisory costs. The costs for individuals to apply for financial assistance are only in the minimal time and effort it will require to obtain an estimate and to complete an application. There is no monetary cost to the applicant. Since businesses are not eligible applicants for a grant from the State Disaster Relief Fund, no additional costs will be incurred by Indiana businesses as a consequence of these proposed rules.

The potential net cost to the State Disaster Relief Fund depends upon the number and severity of disasters in Indiana which are declared by the United States Small Business Administration and for which there has been no disaster declaration issued by the President of the United States. These factors cannot be predicted with any degree of certainty. For the most part, the administrative rules merely establish the administrative procedures that the Indiana Department of Homeland Security will follow in implementing the policy decisions made by the Indiana General Assembly and enacted into law in Public Law 110-2009. 2009 HEA 1428, Section 6, altered the eligibility criteria for individuals who suffered damage to their primary residence because of a disaster. Prior to the enactment of HEA 1428, an

individual was eligible for financial assistance from the State Disaster Relief Act if his or her primary residence was so damaged and if it was located in a territory for which the Governor declared a disaster emergency or the United States Small Business Administration declares as disaster. For an individual's eligibility for financial assistance from the State Disaster Relief Fund, HEA 1428 eliminated the requirement that the governor declare a disaster emergency and added the condition that the President of the United States has not declared a disaster. The statutory criteria are now found in IC 10-14-4-6.

The agency estimates that the proposed rule authorizing an Individual Assistance program is not likely to have a total estimated economic impact of over \$425,000.00 in any given year. This estimate is based on data from 2009. To make this estimate the agency obtained data from the US Small Business Administration. According to the US Small Business Administration, they declared two disasters in Indiana in 2009 (SBA #11870 and SBA # 11926). The first included 1 county and the second included 3 counties. When combined, 85 applications for loans from the individual disaster victims were denied. In the unlikely event that each of the qualifying individuals who suffered eligible damage in 2009 were to qualify for the maximum amount of financial assistance, the amount of loss to the State Disaster Relief Fund would be \$425,000.00. In the unlikely event that each of the qualifying individuals who suffered eligible damage in 2009 were only to qualify for the minimum amount of financial assistance, the amount by which the State Disaster Relief Fund would be reduced is \$42,500.00. These two figures therefore represent a reasonable approximation of the floor and ceiling amounts likely to cause a reduction in the State Disaster Relief Fund in 2009, had the proposed administrative rules been in effect during 2009.

5. **Administrative Expenses:** IDHS has estimated \$18,000.00 in additional administrative expenses, including any legal, consulting or accounting costs which it will be required to incur as a result of the adoption of these proposed administrative rules.

6. **Cost Reductions:** This portion of the Economic Impact Analysis estimates any cost reductions to individuals and businesses as a result of the proposed rules. The amount of the financial assistance IDHS provides to individuals in a year represents a dollar for dollar cost reduction for those applicants from their other sources of payment. Any funds provided by the State Disaster Relief Fund to repair the applicant's home or essential personal property such as an automobile will save that Indiana citizen a like amount that he or she would have been required to borrow, take from current income or pay from savings. That should also result in a dollar for dollar boost to the local economy, since the dollars which are freed up are likely to be spent by the applicant on other necessities of life, such as food, shelter, transportation and the like.

7. **Non-quantifiable costs and benefits.** In certain situations, it is difficult to quantify specific monetary values. The fact that the applicant received some tangible assistance and benefit from state government in a time of high stress and great need provides a certain but non-quantifiable benefit to the individual. Having a necessary car to get to work or tools of one's trade may permit the applicant to remain employed or to remain in an independent living situation, rather than to be applying for unemployment benefits or public housing.

These benefits are difficult to quantify, but they have a major positive impact on the lives of those persons who have lost everything and who must start over again.

8. **Baseline for the cost-benefit analysis.** If the proposed rule is not adopted, IDHS has estimated that the most probable effect is that no payments could be made from the State Disaster Relief Fund to individual applicants. Such a result would not only frustrate the intentions of the Indiana legislature but also would deprive eligible Indiana citizens of the help that they need and which is within the power of the state to provide.

If the proposed rule is not adopted to apportion the State Disaster Relief Fund between amounts available for Public Assistance and Individual Assistance, the likely result will be public consternation and dissatisfaction with the inefficiency of Indiana government in administering this program. All that would be required to cause this result would be several medium sized disasters in a single year which are not of sufficient scope to merit a presidential declaration of a major disaster. Such an occurrence normally would be accompanied by a large number of Indiana units of government with public infrastructure damage that qualifies for a grant from the State Disaster Relief Fund. Such an occurrence might well also be accompanied by a large number of Indiana disaster victims who are denied in their applications for a loan from the United States Small Business Administration. In the eminently possible scenario in which there is not enough money in the State Disaster Relief Fund to satisfy all the legitimate claimants, the State would find it difficult to explain why it has not created an administrative rule to adjust the payments from the fund in some reasonable and equitable manner.

9. **Agency Determination.** In compliance with FMC #2006-2, IDHS has determined that the direct and indirect benefits of adopting these proposed rules are likely to greatly exceed the minimal costs incurred.

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