

HOUSE BILL No. 1340

DIGEST OF INTRODUCED BILL

Citations Affected: IC 2-5-54; IC 4-22-2.

Synopsis: Administrative rules. Removes the requirement that a proposed agency rule, proposed provisional rule, or proposed interim rule that adds or amends language to increase or expand application of a fee, fine, or civil penalty or a schedule of fees, fines, or civil penalties must be submitted to the budget committee for review. Establishes the administrative rules oversight committee to receive complaints regarding a rule or practice of an agency and review certain agency rules.

Effective: Upon passage.

DeLaney

January 10, 2024, read first time and referred to Committee on Government and Regulatory Reform.



Second Regular Session of the 123rd General Assembly (2024)

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 2023 Regular Session of the General Assembly.

HOUSE BILL No. 1340

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 2-5-54 IS ADDED TO THE INDIANA CODE AS
- 2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
- 3 PASSAGE]:
- 4 **Chapter 54. Administrative Rules Oversight Committee**
- 5 **Sec. 1. As used in this chapter, "agency" has the meaning set**
- 6 **forth in IC 4-22-2-3.**
- 7 **Sec. 2. As used in this chapter, "committee" refers to the**
- 8 **administrative rules oversight committee established by section 4**
- 9 **of this chapter.**
- 10 **Sec. 3. As used in this chapter, "rule" has the meaning set forth**
- 11 **in IC 4-22-2-3.**
- 12 **Sec. 4. The administrative rules oversight committee is**
- 13 **established. The committee has oversight over the rules of any**
- 14 **agency that is not listed in IC 4-21.5-2-4.**
- 15 **Sec. 5. (a) The committee consists of the following eight (8)**
- 16 **members of the general assembly:**
- 17 **(1) Four (4) members of the house of representatives**



1 appointed by the speaker of the house of representatives. Not
 2 more than two (2) members appointed under this subdivision
 3 may be members of the same political party.

4 (2) Four (4) members of the senate appointed by the president
 5 pro tempore of the senate. Not more than two (2) members
 6 appointed under this subdivision may be members of the same
 7 political party.

8 (b) The appointing authorities shall make the appointments
 9 under subsection (a) in each even-numbered year, beginning in
 10 2024:

11 (1) after the election of the general assembly; and

12 (2) before December 1.

13 Subject to IC 2-5-1.2-9, an appointment made under this
 14 subdivision remains in effect until the election of the next general
 15 assembly and a subsequent appointment under this subdivision.

16 Sec. 6. (a) The speaker of the house of representatives shall
 17 appoint a member of the committee to be the chair of the
 18 committee for a term beginning on July 15 in an odd-numbered
 19 year and ending on July 14 in an even-numbered year.

20 (b) The president pro tempore of the senate shall appoint a
 21 member of the committee to be chair of the committee for a term
 22 beginning on July 15 in an even-numbered year and ending on July
 23 14 in an odd-numbered 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 (d) The committee shall meet to organize on the call of the chair.
 29 The organizational meeting must be held not later than December
 30 15 of each even-numbered year.

31 (e) In addition to an organizational meeting held under
 32 subsection (d), the committee shall meet two (2) times per year at
 33 the call of the chair.

34 Sec. 7. (a) The committee shall receive and may, at its discretion,
 35 review a complaint filed by a person regarding a rule or practice
 36 of an agency.

37 (b) The committee may, on its own initiative, review an agency
 38 rule or proposed rule, an agency practice, or a failure of an agency
 39 to adopt a rule.

40 (c) The committee may recommend that:

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



- 1 **(2) in the case of a proposed rule, the proposed rule be**
 2 **approved or disapproved by the governor.**
- 3 **(d) When appropriate, the committee shall prepare and arrange**
 4 **for the introduction of a bill to clarify the intent of the general**
 5 **assembly when the general assembly enacted a law or to correct**
 6 **the misapplication of a law by an agency.**
- 7 **Sec. 8. (a) Notice of the time, place, and agenda of committee**
 8 **meetings may be given in the Indiana Register.**
- 9 **(b) The committee may require publication of a periodic**
 10 **announcement in the Indiana Register that describes the duties of**
 11 **the committee and the procedure for filing complaints.**
- 12 **(c) The committee may require publication in the Indiana**
 13 **Register of an account of all or part of the proceedings of the**
 14 **committee.**
- 15 SECTION 2. IC 4-22-2-19.6, AS ADDED BY P.L.249-2023,
 16 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 UPON PASSAGE]: Sec. 19.6. (a) A rule adopted under this article or
 18 IC 13-14-9 that includes a fee, fine, or civil penalty must comply with
 19 this section. Subsections (b), (c), and (d) do not apply to a rule that
 20 must be adopted in a certain form to comply with federal law.
- 21 (b) For each fee, fine, or civil penalty imposed by an agency that is
 22 not set as a specific amount in a state law, a rule must describe the
 23 circumstances for which the agency will assess a fee, fine, or civil
 24 penalty and set forth the amount of the fee, fine, or civil penalty:
- 25 (1) as a specific dollar amount;
- 26 (2) under a formula by which a specific dollar amount can be
 27 reasonably calculated by persons regulated or otherwise affected
 28 by the rule; or
- 29 (3) as a range of potential dollar amounts, stating the factors that
 30 the agency will utilize to set a specific dollar amount in an
 31 individual case with sufficient certainty that a review of an agency
 32 action under IC 4-21.5 or comparable process can evaluate
 33 whether the amount was reasonable.
- 34 A rule concerning fines or civil penalties does not prohibit an agency
 35 to enter into a settlement agreement with a person against whom a fine
 36 or civil penalty is being assessed to determine the fine or civil penalty
 37 to be paid for a violation.
- 38 (c) The amount of a fee must be reasonably based on the amount
 39 necessary to carry out the purposes for which the fee is imposed.
- 40 (d) An agency setting a fine or civil penalty shall consider the
 41 following:
- 42 (1) Whether the violation has a major or minor impact on the



1 health, safety, or welfare of a person, the health or safety of
 2 animals or natural resources, or other facts set forth in the
 3 agency's rule.

4 (2) The number of previous violations committed by the offender
 5 of laws, rules, or programs administered by the agency.

6 (3) The need for deterrence of future violations.

7 (4) Whether the conduct, if proved beyond a reasonable doubt,
 8 would constitute a criminal offense, and the level of penalty set by
 9 law for the criminal offense.

10 (e) An agency is not liable for a fee, fine, or civil penalty that is not
 11 in conformity with this section if

12 ~~(1) the fee, fine, or civil penalty was included in a rule that~~
 13 ~~became effective before January 1, 2023; and that otherwise~~
 14 ~~complies with subsection (b): July 1, 2024. However,~~
 15 **readoption without changes under IC 4-22-2.6 of the**
 16 **nonconforming fee, fine, or civil penalty invalidates the**
 17 **nonconforming fee, fine, or civil penalty.**

18 ~~(2) the fee, fine, or civil penalty was:~~

19 ~~(A) set by an agency before January 1, 2023;~~

20 ~~(B) reviewed by the budget committee:~~

21 ~~(i) in the case of the department of environmental~~
 22 ~~management, the boards listed in IC 13-14-9-1, the office of~~
 23 ~~environmental adjudication, the natural resources~~
 24 ~~commission, the department of natural resources, the~~
 25 ~~Indiana gaming commission, and the Indiana horse racing~~
 26 ~~commission, before December 31, 2023; and~~

27 ~~(ii) in the case of an agency not described in item (i), before~~
 28 ~~July 1, 2024; and~~

29 ~~(C) included in a rule that complies with this section and~~
 30 ~~becomes effective before:~~

31 ~~(i) in the case of the department of environmental~~
 32 ~~management, the boards listed in IC 13-14-9-1, the office of~~
 33 ~~environmental adjudication, the natural resources~~
 34 ~~commission, the department of natural resources, the~~
 35 ~~Indiana gaming commission, and the Indiana horse racing~~
 36 ~~commission, December 31, 2024; and~~

37 ~~(ii) in the case of an agency not described in item (i), July 1,~~
 38 ~~2025; or~~

39 ~~(3) the agency withdraws or otherwise ceases to enforce or apply~~
 40 ~~the fee, fine, or civil penalty before:~~

41 ~~(A) in the case of the department of environmental~~
 42 ~~management, the boards listed in IC 13-14-9-1, the office of~~



1 environmental adjudication, the natural resources commission;
 2 the department of natural resources, the Indiana gaming
 3 commission, and the Indiana horse racing commission;
 4 December 31, 2023; and
 5 (B) in the case of an agency not described in clause (A), July
 6 1, 2024.

7 Readoption without changes under IC 4-22-2.6 of a nonconforming fee,
 8 fine, or civil penalty that meets the requirements of subdivision (1) or
 9 (2) does not invalidate the nonconforming fee, fine, or civil penalty.

10 (f) Beginning January 1, 2024, an agency shall post on its website
 11 a schedule of fines and civil penalties that apply to violations of laws,
 12 rules, and requirements of federal programs administered by the
 13 agency.

14 SECTION 3. IC 4-22-2-22.8, AS ADDED BY P.L.249-2023,
 15 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 UPON PASSAGE]: Sec. 22.8. (a) After conducting a regulatory
 17 analysis under section 22.7 of this chapter, if an agency elects to adopt
 18 a rule subject to section 23 of this chapter or IC 13-14-9, the agency
 19 shall submit a request to the budget agency and the office of
 20 management and budget to authorize commencement of the public
 21 comment periods under this chapter or IC 13-14-9 (as applicable). The
 22 request must include the following:

- 23 (1) A general description of the subject matter of the proposed
 24 rule.
- 25 (2) The full text of the proposed rule (including a copy of any
 26 matter incorporated by reference under section 21 of this chapter)
 27 in the form required by the publisher, including citations to any
 28 related authorizing and affected Indiana statutes.
- 29 (3) The regulatory analysis, including supporting data, prepared
 30 under section 22.7 of this chapter.
- 31 (4) Any other information required by the office of management
 32 and budget.

33 (b) The budget agency and the office of management and budget
 34 shall expedite the review of the request to adopt a rule. The budget
 35 agency and the office of management and budget may do the following:

- 36 (1) Return the request to the agency with a statement describing
 37 any additional information needed to authorize or disapprove
 38 further rulemaking actions on one (1) or more of the rules in the
 39 request.
- 40 (2) Authorize the commencement of the public comment periods
 41 on one (1) or more of the rules in the request with or without
 42 changes.



1 (3) Disapprove commencement of the public comment periods on
2 one (1) or more of the rules with a statement of reasons for the
3 disapproval.

4 (c) If an agency has requested authorization for more than one (1)
5 rule in the same request, the budget agency and the office of
6 management and budget may make separate determinations with
7 respect to some or all of the rules in the request. Approval of a request
8 shall be treated as a determination that the review conducted and
9 findings made by the agency comply with the requirements of section
10 22.7 of this chapter and this section. ~~The budget agency and the office
11 of management and budget may not approve any part of a proposed
12 rule that adds or amends language to increase or expand application of
13 a fee, fine, or civil penalty or a schedule of fees, fines, or civil penalties
14 before submitting the proposed rule to the budget committee for
15 review.~~

16 (d) Notice of the determination shall be provided to the agency in an
17 electronic format required by the publisher. The budget agency and the
18 office of management and budget may return to the agency any copy of
19 a matter incorporated by reference under section 21 of this chapter that
20 was submitted with the request.

21 (e) If an agency revises a proposed rule after the budget agency and
22 the office of management and budget authorize commencement of the
23 public comment periods, the agency must obtain a new notice of
24 determination under subsection (d). The agency shall resubmit to the
25 budget agency and the office of management and budget the revised
26 proposed rule and a revised regulatory analysis with sufficient
27 information for the budget agency and the office of management and
28 budget to determine the impact the revisions have on the regulatory
29 analysis previously reviewed by the budget agency and the office of
30 management and budget. After obtaining a new notice of
31 determination, the agency shall submit to the publisher the new notice
32 of determination, the revised proposed rule, and the revised regulatory
33 analysis.

34 SECTION 4. IC 4-22-2-23, AS AMENDED BY P.L.249-2023,
35 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
36 UPON PASSAGE]: Sec. 23. (a) An agency shall provide notice in the
37 Indiana Register of the first public comment period required by this
38 section. To publish notice of the first public comment period in the
39 Indiana Register, the agency must submit the following to the
40 publisher:

41 (1) A statement of the date, time, and place at which the hearing
42 required by section 26 of this chapter will be convened, including



- 1 information for how to attend the public hearing remotely.
- 2 (2) The full text of the agency's proposed rule in the form required
- 3 by section 20 of this chapter and the documents required by
- 4 section 21 of this chapter.
- 5 (3) The latest version of the regulatory analysis submitted to the
- 6 budget agency and the office of management and budget under
- 7 section 22.8 of this chapter.
- 8 (4) The determination of the budget agency and the office of
- 9 management and budget authorizing commencement of the public
- 10 comment periods.
- 11 ~~(5) If the proposed rule adds or amends language to increase or~~
- 12 ~~expand application of a fee, fine, or civil penalty or a schedule of~~
- 13 ~~fees, fines, or civil penalties; the agenda of the budget committee~~
- 14 ~~meeting at which the rule was scheduled for review.~~
- 15 (6) ~~(5)~~ The notice required under subsection (b).
- 16 (b) The notice of the first public comment period must include the
- 17 following:
- 18 (1) A general description of the subject matter of the proposed
- 19 rule.
- 20 (2) An overview of the intent and scope of the proposed rule and
- 21 the statutory authority for the rule.
- 22 (3) The latest version of the regulatory analysis submitted to the
- 23 budget agency and the office of management and budget under
- 24 section 22.8 of this chapter, excluding any appendices containing
- 25 any data, studies, or analyses referenced in the regulatory
- 26 analysis.
- 27 (4) Information concerning where, when, and how a person may
- 28 submit written comments on the proposed rule, including contact
- 29 information concerning the small business regulatory coordinator
- 30 required by section 28.1 of this chapter.
- 31 (5) Information concerning where, when, and how a person may
- 32 inspect and copy the regulatory analysis, and any data, studies, or
- 33 analyses referenced under subdivision (3).
- 34 (6) Information concerning where, when, and how a person may
- 35 inspect any documents incorporated by reference into the
- 36 proposed rule under section 21 of this chapter.
- 37 (7) An indication that, if the agency does not receive any
- 38 substantive comments during the public comment period or
- 39 public hearing, the agency may adopt a rule that is the same as or
- 40 does not substantially differ from the text of the proposed rule
- 41 published under this section.
- 42 Inadequacy or insufficiency of the published description or regulatory



1 analysis in a notice published under this section does not invalidate a
2 rulemaking action.

3 (c) Although the agency may comply with the publication
4 requirements of this section on different days, the agency must comply
5 with all of the publication requirements of this section at least thirty
6 (30) days before the public hearing required by section 26 of this
7 chapter is convened.

8 (d) The publisher shall review materials submitted under this
9 section and determine the date that the publisher intends to publish the
10 text of the proposed rule and the notice in the Indiana Register. If the
11 submitted material complies with this section, the publisher shall
12 establish the intended publication date, assign a document control
13 number to the proposed rule, and provide a written or an electronic
14 mail authorization to proceed to the agency. The publisher shall publish
15 the following in the Indiana Register on the intended publication date:

16 (1) The notice of the first public comment period, including any
17 information required under IC 13-14-9-4 (if applicable).

18 (2) The full text of the agency's proposed rule (excluding the full
19 text of a matter incorporated by reference under section 21 of this
20 chapter).

21 SECTION 5. IC 4-22-2-37.1, AS AMENDED BY P.L.249-2023,
22 SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
23 UPON PASSAGE]: Sec. 37.1. (a) The following do not apply to a rule
24 adopted under this section:

25 (1) Sections 23 through 27 of this chapter or IC 13-14-9 (as
26 applicable).

27 (2) Sections 28 through 36 of this chapter.

28 The amendments to this section made in the 2023 regular session of the
29 general assembly apply to provisional rules that are accepted for filing
30 by the publisher of the Indiana Register after June 30, 2023, regardless
31 of whether the adopting agency initiated official action to adopt the rule
32 by the name of emergency rule or provisional rule before July 1, 2023.
33 An action taken before July 1, 2023, in conformity with this section (as
34 effective after June 30, 2023) is validated to the same extent as if the
35 action was taken after June 30, 2023.

36 (b) An agency may adopt a rule on a subject for which the agency
37 has rulemaking authority using the procedures in this section if the
38 governor finds that the agency proposing to adopt the rule has
39 demonstrated to the satisfaction of the governor that use of provisional
40 rulemaking procedures under this section is necessary to avoid:

41 (1) an imminent and a substantial peril to public health, safety, or
42 welfare;



- 1 (2) an imminent and a material loss of federal funds for an agency
 2 program;
 3 (3) an imminent and a material deficit;
 4 (4) an imminent and a substantial violation of a state or federal
 5 law or the terms of a federal agreement or program;
 6 (5) injury to the business or interests of the people or any public
 7 utility of Indiana as determined under IC 8-1-2-113;
 8 (6) an imminent and a substantial peril to:
 9 (A) wildlife; or
 10 (B) domestic animal;
 11 health, safety, or welfare; or
 12 (7) the spread of invasive species, pests, or diseases affecting
 13 plants.

14 To obtain a determination from the governor, an agency must submit
 15 to the governor the text of the proposed provisional rule, a statement
 16 justifying the need for provisional rulemaking procedures, and any
 17 additional information required by the governor in the form and in the
 18 manner required by the governor. ~~The governor may not approve~~
 19 ~~provisional rulemaking for any part of a proposed provisional rule that~~
 20 ~~adds or amends language to increase or expand application of a fee,~~
 21 ~~fine, or civil penalty or a schedule of fees, fines, or civil penalties~~
 22 ~~before submitting the proposal to the budget committee for review.~~ A
 23 notice of determination by the governor shall include findings that
 24 explain the basis for the determination. The notice of determination
 25 shall be provided to the agency in an electronic format. Approval of a
 26 request shall be treated as a determination that the rule meets the
 27 criteria in this subsection.

28 (c) After the governor approves provisional rulemaking procedures
 29 for a rule but before the agency adopts the provisional rule, the agency
 30 shall obtain a document control number from the publisher. The
 31 publisher shall determine the documents and the format of the
 32 documents that must be submitted to the publisher to obtain a
 33 document control number. The agency must submit at least the
 34 following:

- 35 (1) The full text of the proposed provisional rule in the form
 36 required by section 20 of this chapter.
 37 (2) A statement justifying the need for provisional rulemaking.
 38 (3) The approval of the governor to use provisional rulemaking
 39 procedures required by law.
 40 (4) The documents required by section 21 of this chapter.

41 An agency may not adopt a proposed provisional rule until after the
 42 publisher notifies the agency that the publisher has complied with



1 subsection (d). At least ten (10) regular business days must elapse after
 2 the publisher has complied with subsection (d) before the department
 3 of natural resources, the natural resources commission, the department
 4 of environmental management, or a board that has rulemaking authority
 5 under IC 13 adopts a provisional rule.

6 (d) Upon receipt of documents described in subsection (c), the
 7 publisher shall distribute the full text of the proposed provisional rule
 8 to legislators and legislative committees in the manner and the form
 9 specified by the legislative council or the personnel subcommittee of
 10 the legislative council acting for the legislative council. After
 11 distribution has occurred, the publisher shall notify the agency of the
 12 date that distribution under this subsection has occurred.

13 (e) After the document control number has been assigned and the
 14 agency adopts the provisional rule, the agency shall submit the
 15 following to the publisher for filing:

16 (1) The text of the adopted provisional rule. The agency shall
 17 submit the provisional rule in the form required by section 20 of
 18 this chapter.

19 (2) A signature page that indicates that the agency has adopted the
 20 provisional rule in conformity with all procedures required by
 21 law.

22 ~~(3) If the provisional rule adds or amends language to increase or~~
 23 ~~expand application of a fee, fine, or civil penalty or a schedule of~~
 24 ~~fees, fines, or civil penalties, the agenda of the budget committee~~
 25 ~~meeting at which the rule was scheduled for review.~~

26 ~~(4)~~ (3) The documents required by section 21 of this chapter.

27 The publisher shall determine the format of the provisional rule and
 28 other documents to be submitted under this subsection. The substantive
 29 text of the adopted provisional rule must be substantially similar to the
 30 text of the proposed provisional rule submitted to the governor. A
 31 provisional rule may suspend but not repeal a rule approved by the
 32 governor under section 34 of this chapter.

33 (f) Subject to subsections (c) and (e) and section 39 of this chapter,
 34 the publisher shall:

35 (1) accept the provisional rule for filing;

36 (2) electronically record the date and time that the provisional
 37 rule is accepted; and

38 (3) publish the text of the adopted provisional rule and the
 39 governor's approval in the Indiana Register.

40 (g) A provisional rule adopted by an agency under this section takes
 41 effect on the latest of the following dates:

42 (1) The effective date of the statute delegating authority to the



- 1 agency to adopt the provisional rule.
- 2 (2) The date and time that the provisional rule is accepted for
3 filing under subsection (f).
- 4 (3) The effective date stated by the adopting agency in the
5 provisional rule.
- 6 (4) The date of compliance with every requirement established by
7 law as a prerequisite to the adoption or effectiveness of the
8 provisional rule.
- 9 (5) The statutory effective date for a provisional rule set forth in
10 law.
- 11 (h) An agency may amend a provisional rule with another
12 provisional rule by following the procedures in this section for the
13 amended provisional rule. However, unless otherwise provided by
14 IC 4-22-2.3, a provisional rule and all amendments of a provisional rule
15 by another provisional rule expire not later than one hundred eighty
16 (180) days after the initial provisional rule is accepted for filing under
17 subsection (f). The subject of the provisional rule, including all
18 amendments to the provisional rule, may not be subsequently extended
19 under this section or section 37.2 of this chapter. If the governor
20 determines that the circumstance that is the basis for using the
21 procedures under this section ceases to exist, the governor may
22 terminate the provisional rule before the lapse of one hundred eighty
23 (180) days. The termination is effective when filed with the publisher.
24 The publisher shall publish the termination notice in the Indiana
25 Register.
- 26 (i) Subject to subsection (j), the attorney general or the governor
27 may file an objection to a provisional rule that is adopted under this
28 section not later than forty-five (45) days after the date that a
29 provisional rule or amendment to a provisional rule is accepted for
30 filing under subsection (f). The objection must cite the document
31 control number for the affected provisional rule and state the basis for
32 the objection. When filed with the publisher, the objection has the
33 effect of invalidating the provisional rule or amendment to a
34 provisional rule. The publisher shall publish the objection in the
35 Indiana Register.
- 36 (j) The attorney general may file a written objection to a provisional
37 rule under subsection (i) only if the attorney general determines that the
38 provisional rule has been adopted:
- 39 (1) without statutory authority; or
40 (2) without complying with this section.
- 41 A notice of objection to a provisional rule by the attorney general must
42 include findings that explain the basis for the determination. The notice



1 of objection shall be provided to the agency in an electronic format.

2 SECTION 6. IC 4-22-2-37.2, AS ADDED BY P.L.249-2023,
3 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 UPON PASSAGE]: Sec. 37.2. (a) The following do not apply to a rule
5 adopted under this section:

6 (1) Sections 23 through 27 of this chapter or IC 13-14-9 (as
7 applicable).

8 (2) Sections 28 through 36 of this chapter.

9 This section as added by the 2023 regular session of the general
10 assembly applies to interim rules that are accepted for filing by the
11 publisher of the Indiana Register after June 30, 2023, regardless of
12 whether the adopting agency initiated official action to adopt the
13 interim rule before July 1, 2023. An action taken before July 1, 2023,
14 in conformity with this section (as effective after June 30, 2023) is
15 validated to the same extent as if the action was taken after June 30,
16 2023.

17 (b) An agency may only adopt a rule on a subject for which the
18 agency has rulemaking authority using the procedures in this section if
19 the governor finds that the agency proposing to adopt the rule has
20 demonstrated to the satisfaction of the governor that use of interim
21 rulemaking procedures under this section is necessary to implement:

22 (1) a new state or federal law or program, rule of another state
23 agency, federal regulation, or federal grant or loan agreement, or
24 (if used by the agency to carry out the agency's responsibilities)
25 a building, an equipment, a firefighting, a safety, or a professional
26 code adopted by a nationally recognized organization;

27 (2) a change in a state or federal law or program, rule of another
28 state agency, federal regulation, federal grant or loan agreement,
29 or (if used by the agency to carry out the agency's responsibilities)
30 a building, an equipment, a firefighting, a safety, or a professional
31 code adopted by a nationally recognized organization; or

32 (3) a category of rule authorized under IC 4-22-2.3 to be adopted
33 as an interim rule;

34 before the time that a final rule approved by the governor under section
35 34 of this chapter could reasonably take effect.

36 (c) To obtain a determination from the governor, an agency must
37 submit to the governor the text of the proposed interim rule, a statement
38 justifying the need for interim rulemaking procedures, and any
39 additional information required by the governor in the form and in the
40 manner required by the governor. ~~The governor may not approve
41 interim rulemaking for any part of a proposed interim rule that adds or
42 amends language to increase or expand application of a fee, fine, or~~



1 civil penalty or a schedule of fees, fines, or civil penalties before
 2 submitting the proposal to the budget committee for review. A notice
 3 of determination by the governor shall include findings that explain the
 4 basis for the determination. The notice of determination shall be
 5 provided to the agency in an electronic format. Approval of a request
 6 shall be treated as a determination that the rule meets the criteria in this
 7 subsection.

8 (d) To publish a notice of interim rulemaking in the Indiana
 9 Register, the agency must submit the following to the publisher:

10 (1) The full text of the agency's proposed interim rule in the form
 11 required by section 20 of this chapter.

12 (2) The approval of the governor to use interim rulemaking
 13 procedures for the rule.

14 ~~(3) If the interim rule adds or amends language to increase or~~
 15 ~~expand application of a fee, fine, or civil penalty or a schedule of~~
 16 ~~fees, fines, or civil penalties, the agenda of the budget committee~~
 17 ~~meeting at which the rule was scheduled for review.~~

18 ~~(4)~~ (3) The documents required by section 21 of this chapter.

19 The publisher shall review materials submitted under this section and
 20 determine the date that the publisher intends to include the material in
 21 the Indiana Register. After establishing the intended publication date,
 22 the publisher shall provide a written or an electronic mail authorization
 23 to proceed to the agency.

24 (e) The agency shall include the following in the notice of the public
 25 comment period:

26 (1) A general description of the subject matter of the proposed
 27 interim rule, including the document control number.

28 (2) The full text of the agency's proposed interim rule in the form
 29 required by section 20 of this chapter (excluding the text of a
 30 matter incorporated by reference under section 21 of this chapter).

31 (3) A statement justifying any requirement or cost that is:

32 (A) imposed on a regulated entity under the interim rule; and

33 (B) not expressly required by the statute authorizing the
 34 agency to adopt rules or any other state or federal law.

35 The statement required under this subdivision must include a
 36 reference to any data, studies, or analyses relied upon by the
 37 agency in determining that the imposition of the requirement or
 38 cost is necessary.

39 (4) Information concerning where, when, and how a person may
 40 inspect and copy any data, studies, or analyses referenced under
 41 subdivision (3).

42 (5) Information concerning where, when, and how a person may



1 inspect any documents incorporated by reference into the
2 proposed interim rule under section 21 of this chapter.

3 (6) A date that is thirty (30) days after the notice is published in
4 the Indiana Register by which written comments are due and a
5 statement explaining that any person may submit written
6 comments concerning the proposed interim rule during the public
7 comment period and instructions on when, where, and how the
8 person may submit written comments.

9 However, inadequacy or insufficiency of the subject matter description
10 under subdivision (1) or a statement of justification under subdivision
11 (3) in a notice does not invalidate a rulemaking action. An agency may
12 continue the public comment period by publishing a subsequent notice
13 in the Indiana Register extending the public comment period.

14 (f) Before adopting the interim rule, the agency shall prepare a
15 written response to comments received by the agency, including the
16 reasons for rejecting any recommendations made in the comments.

17 (g) After an agency has completed the public comment period and
18 complied with subsection (f), the agency may:

19 (1) adopt a rule that is identical to a proposed interim rule
20 published in the Indiana Register under this section; or

21 (2) adopt a revised version of a proposed interim rule published
22 under this section and include provisions that did not appear in
23 the initially published proposed version.

24 An agency may not adopt an interim rule that substantially differs from
25 the version of the proposed interim rule published in the Indiana
26 Register under this section, unless it is a logical outgrowth of any
27 proposed interim rule as supported by any written comments submitted
28 during the public comment period.

29 (h) After the agency adopts the interim rule, the agency shall submit
30 the following to the publisher for filing:

31 (1) The text of the adopted interim rule. The agency shall submit
32 the full text of the interim rule in the form required by section 20
33 of this chapter.

34 (2) A summary of the comments received by the agency during
35 the public comment period and the agency's response to the
36 comments.

37 (3) A signature page that indicates that the agency has adopted the
38 interim rule in conformity with all procedures required by law.

39 (4) The documents required by section 21 of this chapter.

40 The publisher shall determine the format of the interim rule and other
41 documents to be submitted under this subsection. An interim rule may
42 suspend but not repeal a rule approved by the governor under section



- 1 34 of this chapter.
- 2 (i) Subject to subsection (h) and section 39 of this chapter, the
3 publisher shall:
- 4 (1) accept the interim rule for filing;
- 5 (2) electronically record the date and time that the interim rule is
6 accepted; and
- 7 (3) publish the text of the adopted interim rule and the governor's
8 approval in the Indiana Register.
- 9 (j) An interim rule adopted by an agency under this section takes
10 effect on the latest of the following dates:
- 11 (1) The effective date of the statute delegating authority to the
12 agency to adopt the interim rule.
- 13 (2) The date and time that the interim rule is accepted for filing
14 under subsection (i).
- 15 (3) The effective date stated by the adopting agency in the interim
16 rule.
- 17 (4) The date of compliance with every requirement established by
18 law as a prerequisite to the adoption or effectiveness of the
19 interim rule.
- 20 (5) The statutory effective date for an interim rule set forth in law.
- 21 (k) An agency may amend an interim rule with another interim rule
22 by following the procedures in this section for adoption of an interim
23 rule. Except as provided in IC 4-22-2.3, an interim rule and all
24 subsequent rules on the same subject adopted under section 37.1 of this
25 chapter or this section expire not later than four hundred twenty-five
26 (425) days after the initial interim rule is accepted for filing under
27 subsection (i).
- 28 (l) Subject to subsection (m), the attorney general or the governor
29 may file an objection to an interim rule that is adopted under this
30 section not later than forty-five (45) days after the date that an interim
31 rule or amendment to an interim rule is accepted for filing under
32 subsection (i). The objection must cite the document control number
33 for the affected interim rule and state the basis for the objection. When
34 filed with the publisher, the objection has the effect of invalidating the
35 interim rule or amendment to an interim rule. The publisher shall
36 publish the objection in the Indiana Register.
- 37 (m) The attorney general may file a written objection to an interim
38 rule under subsection (l) only if the attorney general determines that the
39 interim rule has been adopted:
- 40 (1) without statutory authority; or
- 41 (2) without complying with this section.
- 42 A notice of objection to an interim rule by the attorney general must



1 include findings that explain the basis for the determination. The notice
2 of objection shall be provided to the agency in an electronic format.

3 SECTION 7. **An emergency is declared for this act.**

