

# SENATE BILL No. 198

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 2-5-46; IC 4-22.

**Synopsis:** Administrative rules oversight committee. Establishes the administrative rules oversight committee (committee) and provides for appointment of the committee. Provides that the committee shall meet at the call of the chair. Requires an agency to submit a proposed rule or an emergency rule to the committee for review. Allows the committee to: (1) file an objection and make recommendations; and (2) withdraw an objection or file a certified objection; concerning a proposed administrative rule or an emergency administrative rule, or a previously adopted administrative rule or previously adopted emergency administrative rule.

**Effective:** July 1, 2020.

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January 13, 2020, read first time and referred to Committee on Judiciary.

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Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

## SENATE BILL No. 198

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 2-5-46 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2020]:  
4 **Chapter 46. 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 5**  
9 **of this chapter.**  
10 **Sec. 3. As used in this chapter, "council" refers to the legislative**  
11 **council established by IC 2-5-1.1-1.**  
12 **Sec. 4. As used in this chapter, "rule" has the meaning set forth**  
13 **in IC 4-22-2-3.**  
14 **Sec. 5. The administrative rules oversight committee is**  
15 **established.**  
16 **Sec. 6. (a) Except as provided in subsections (b), (c), and (d),**  
17 **IC 2-5-1.2 applies to the committee.**



1           **(b) The committee consists of the following ten (10) members of**  
 2 **the general assembly:**

3           **(1) Three (3) members appointed by the president pro**  
 4 **tempore of the senate.**

5           **(2) Two (2) members appointed by the minority leader of the**  
 6 **senate.**

7           **(3) Three (3) members appointed by the speaker of the house**  
 8 **of representatives.**

9           **(4) Two (2) members appointed by the minority leader of the**  
 10 **house of representatives.**

11 **A member of the committee serves at the pleasure of the**  
 12 **appointing authority.**

13           **(c) The committee shall meet at the call of the chair. All**  
 14 **meetings of the committee shall be open to the public in accordance**  
 15 **with and subject to IC 5-14-1.5. All records of the committee shall**  
 16 **be subject to the requirements of IC 5-14-3.**

17           **(d) A majority of the members of the committee constitutes a**  
 18 **quorum. The affirmative vote of at least a majority of the members**  
 19 **of the committee is necessary for the committee to take official**  
 20 **action other than to meet and take testimony.**

21           **Sec. 7. The committee may convene a meeting to review:**

22           **(1) a proposed rule received from an agency under**  
 23 **IC 4-22-2-24.5;**

24           **(2) an emergency rule received from an agency under**  
 25 **IC 4-22-2-24.5;**

26           **(3) a previously adopted rule; or**

27           **(4) a previously adopted emergency rule.**

28           **Sec. 8. (a) The committee shall:**

29           **(1) receive proposed rules and emergency rules from agencies;**  
 30 **and**

31           **(2) provide a copy of a proposed rule or an emergency rule**  
 32 **received from an agency to:**

33           **(A) the chair of the appropriate standing committee or**  
 34 **standing committees; and**

35           **(B) each member of the appropriate standing committee or**  
 36 **standing committees who requests a copy of the rule;**

37 **as described in IC 4-22-2-24.5.**

38           **(b) The committee may:**

39           **(1) file an objection and make recommendations; and**

40           **(2) withdraw an objection or file a certified objection;**

41 **concerning a proposed rule or an emergency rule received from an**  
 42 **agency, or a previously adopted rule or previously adopted**



1 **emergency rule, as described in IC 4-22-2-24.7.**

2 SECTION 2. IC 4-22-2-3.3 IS ADDED TO THE INDIANA CODE  
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
4 1, 2020]: **Sec. 3.3. As used in this chapter, "administrative rules  
5 oversight committee" refers to the administrative rules oversight  
6 committee established by IC 2-5-46-5.**

7 SECTION 3. IC 4-22-2-20, AS AMENDED BY P.L.53-2014,  
8 SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
9 JULY 1, 2020]: Sec. 20. (a) Whenever an agency submits a rule to the  
10 publisher, the attorney general, ~~or~~ the governor, **or the administrative  
11 rules oversight committee** under this chapter, the agency shall submit  
12 the rule in the form of a written document that:

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

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

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

24 SECTION 4. IC 4-22-2-24.5 IS ADDED TO THE INDIANA CODE  
25 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
26 1, 2020]: **Sec. 24.5. (a) At the same time an agency submits a  
27 proposed rule to the publisher under section 24 of this chapter or  
28 a rule to the publisher under section 37.1 of this chapter, the  
29 agency shall submit the rule to the administrative rules oversight  
30 committee for review. The agency shall submit the following to the  
31 administrative rules oversight committee:**

- 32 (1) **The rule in the form required by section 20 of this chapter.**  
33 (2) **The documents required by section 21 of this chapter.**  
34 (3) **Any other documents or information requested by the  
35 administrative rules oversight committee.**

36 (b) **The administrative rules oversight committee shall provide,  
37 in an electronic format under IC 5-14-6, a copy of a rule received  
38 from an agency under this section to:**

- 39 (1) **the chair of the standing committee or standing  
40 committees that have subject matter jurisdiction most closely  
41 relating to the subject matter of the rule; and**  
42 (2) **each member of the appropriate standing committee or**



1 standing committees who requests a copy of the rule.

2 (c) The agency shall submit information and documents to the  
3 administrative rules oversight committee concerning any  
4 subsequent changes to the rule that occur between:

- 5 (1) when the agency submits the rule under this section; and  
6 (2) when the agency submits the final rule to the publisher  
7 under section 35 of this chapter.

8 SECTION 5. IC 4-22-2-24.7 IS ADDED TO THE INDIANA CODE  
9 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
10 1, 2020]: Sec. 24.7. (a) Not later than forty-five (45) days after  
11 receiving a rule from an agency under section 24.5 of this chapter,  
12 the administrative rules oversight committee may object to the  
13 proposed rule or emergency rule and recommend that the agency  
14 revise or withdraw the rule. If the administrative rules oversight  
15 committee objects to the rule, the administrative rules oversight  
16 committee shall file its written objection to the proposed rule or  
17 emergency rule, including the reason for the objection, with the  
18 agency, and provide a copy to the publisher. If the administrative  
19 rules oversight committee does not timely file a written objection,  
20 the rule is deemed approved by the administrative rules oversight  
21 committee.

22 (b) The administrative rules oversight committee may object to  
23 a rule under this section after a review for the following:

- 24 (1) Whether the rule is consistent with the intent of the  
25 general assembly.  
26 (2) The extent to which the rule creates an unfunded mandate  
27 on any state agency or political subdivision.  
28 (3) The extent to which the rule complies with the standards  
29 in section 19.5 of this chapter.  
30 (4) Whether the rule exceeds the authority of the agency.  
31 (5) Whether the rule is arbitrary.

32 (c) Not later than fourteen (14) days after receiving a written  
33 objection under subsection (a), the agency shall respond in writing  
34 to the administrative rules oversight committee, and provide a  
35 copy to the publisher. In the agency's response, the agency may  
36 include revisions to the proposed rule intended to cure any defect  
37 noted by the administrative rules oversight committee.

38 (d) Not later than thirty (30) days after receipt of the agency's  
39 response, the administrative rules oversight committee may:

- 40 (1) withdraw or modify its objection by filing a written notice  
41 with the agency and providing a copy to the publisher; or  
42 (2) file the written objection with the publisher requesting



1           **certification of the objection.**

2           **Upon receipt of a written objection and request for certification**  
 3           **described in subdivision (2), the publisher shall affix a certification**  
 4           **of receipt to the written objection and provide a copy to the**  
 5           **agency.**

6           **(e) If the administrative rules oversight committee does not**  
 7           **timely respond under subsection (d) to the agency's response, the**  
 8           **rule is deemed approved by the administrative rules oversight**  
 9           **committee.**

10           **(f) If the administrative rules oversight committee files a**  
 11           **certified written objection to a proposed rule or emergency rule**  
 12           **under subsection (d), IC 4-22-9-3(d) applies in any subsequent**  
 13           **action for judicial review concerning the rule or enforcement of the**  
 14           **rule.**

15           **(g) The publisher shall publish any document received from the**  
 16           **administrative rules oversight committee or an agency under this**  
 17           **section in the Indiana Register.**

18           SECTION 6. IC 4-22-2-29, AS AMENDED BY P.L.237-2017,  
 19           SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 20           JULY 1, 2020]: Sec. 29. (a) As used in this section, "small business  
 21           ombudsman" refers to the small business ombudsman designated under  
 22           IC 5-28-17-6.

23           (b) After an agency has complied with sections **24.5, 24.7, 26, 27,**  
 24           **and 28,** of this chapter, the agency may:

25           (1) adopt a rule that is identical to a proposed rule published in  
 26           the Indiana Register under section 24 of this chapter;

27           (2) subject to subsection (c), adopt a rule that consolidates part or  
 28           all of two (2) or more proposed rules published in the Indiana  
 29           Register under section 24 of this chapter and considered under  
 30           section 27 of this chapter;

31           (3) subject to subsection (c), adopt part of one (1) or more  
 32           proposed rules described in subdivision (2) in two (2) or more  
 33           separate adoption actions; or

34           (4) subject to subsection (c), adopt a revised version of a proposed  
 35           rule published under section 24 of this chapter and include  
 36           provisions that did not appear in the published version, including  
 37           any provisions recommended by the small business ombudsman  
 38           under IC 4-22-2.1-6(a) **or the administrative rules oversight**  
 39           **committee under section 24.7 of this chapter,** if applicable.

40           (c) An agency may not adopt a rule that substantially differs from  
 41           the version or versions of the proposed rule or rules published in the  
 42           Indiana Register under section 24 of this chapter, unless it is a logical



1 outgrowth of any proposed rule as supported by:

2 (1) any written comments submitted:

3 (†) (A) during the public comment period; or

4 (‡) (B) by the small business ombudsman under  
5 IC 4-22-2.1-6(a), if applicable; or

6 (2) a recommendation from the administrative rules oversight  
7 committee under section 24.7 of this chapter.

8 SECTION 7. IC 4-22-2-35, AS AMENDED BY P.L.123-2006,  
9 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
10 JULY 1, 2020]: Sec. 35. (a) When a rule has been approved or deemed  
11 approved by the governor within the period allowed by section 25 of  
12 this chapter, the agency shall immediately submit the rule to the  
13 publisher for filing. The agency shall submit the rule in the form  
14 required by section 20 of this chapter and with the documents required  
15 by section 21 of this chapter.

16 (b) The agency shall submit to the publisher the copies of the rule  
17 and other documents specified in section 31 of this chapter.

18 (c) Subject to section 39 of this chapter, the publisher shall:

19 (1) accept the rule for filing; and

20 (2) electronically record the date and time the rule is accepted.

21 (d) **If the administrative rules oversight committee has filed a**  
22 **certified written objection to a rule under section 24.7 of this**  
23 **chapter that is subsequently submitted to the publisher for filing**  
24 **under this section, the publisher shall note the certified written**  
25 **objection with the published rule.**

26 SECTION 8. IC 4-22-2-37.1, AS AMENDED BY P.L.140-2013,  
27 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
28 JULY 1, 2020]: Sec. 37.1. (a) The following do not apply to a rule  
29 adopted under this section:

30 (1) **Section 24 of this chapter.**

31 (†) (2) Sections ~~24~~ 25 through 36 of this chapter.

32 (‡) (3) IC 13-14-9.

33 (b) A rule may be adopted under this section if a statute delegating  
34 authority to an agency to adopt rules authorizes adoption of such a rule:

35 (1) under this section; or

36 (2) in the manner provided by this section.

37 (c) After an agency adopts a rule under this section, the agency shall  
38 submit the rule to the publisher for the assignment of a document  
39 control number. The agency shall submit the rule in the form required  
40 by section 20 of this chapter and with the documents required by  
41 section 21 of this chapter. The publisher shall determine the format of  
42 the rule and other documents to be submitted under this subsection.



1 (d) After the document control number has been assigned, the  
 2 agency shall submit the rule to the publisher for filing. The agency  
 3 shall submit the rule in the form required by section 20 of this chapter  
 4 and with the documents required by section 21 of this chapter. The  
 5 publisher shall determine the format of the rule and other documents  
 6 to be submitted under this subsection.

7 (e) Subject to section 39 of this chapter, the publisher shall:

8 (1) accept the rule for filing; and

9 (2) electronically record the date and time that the rule is  
 10 accepted.

11 (f) A rule adopted by an agency under this section takes effect on  
 12 the latest of the following dates:

13 (1) The effective date of the statute delegating authority to the  
 14 agency to adopt the rule.

15 (2) The date and time that the rule is accepted for filing under  
 16 subsection (e).

17 (3) The effective date stated by the adopting agency in the rule.

18 (4) The date of compliance with every requirement established by  
 19 law as a prerequisite to the adoption or effectiveness of the rule.

20 (5) The statutory effective date for an emergency rule set forth in  
 21 the statute authorizing the agency to adopt emergency rules.

22 (g) Unless otherwise provided by the statute authorizing adoption  
 23 of the rule:

24 (1) a rule adopted under this section expires not later than ninety  
 25 (90) days after the rule is accepted for filing under subsection (e);

26 (2) a rule adopted under this section may be extended by adopting  
 27 another rule under this section, but only for one (1) extension  
 28 period; and

29 (3) for a rule adopted under this section to be effective after one

30 (1) extension period, the rule must be adopted under:

31 (A) sections 24 through 36 of this chapter; or

32 (B) IC 13-14-9;

33 as applicable.

34 (h) This section may not be used to readopt a rule under IC 4-22-2.5.

35 (i) The publisher of the Indiana administrative code shall annually  
 36 publish a list of agencies authorized to adopt rules under this section.

37 **(j) If the administrative rules oversight committee has filed a**  
 38 **certified written objection to a rule under section 24.7 of this**  
 39 **chapter that is subsequently submitted to the publisher for filing**  
 40 **under this section, the publisher shall note the certified written**  
 41 **objection with the published rule.**

42 SECTION 9. IC 4-22-2-40, AS AMENDED BY P.L.53-2014,





1 SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
2 JULY 1, 2020]: Sec. 40. (a) At any time before a rule is accepted for  
3 filing by the publisher under section 35, 37.1, or 38 of this chapter, the  
4 agency that adopted the rule may recall it. A rule may be recalled  
5 regardless of whether:

6 **(1) the rule has been approved or revisions have been**  
7 **recommended by the administrative rules oversight**  
8 **committee under section 24.7 of this chapter;**

9 ~~(+)~~ **(2)** the rule has been disapproved by the attorney general  
10 under section 32 of this chapter; or

11 ~~(=)~~ **(3)** the rule has been disapproved by the governor under  
12 section 34 of this chapter.

13 (b) Sections 24 through 38 of this chapter do not apply to a recall  
14 action under this section. However, the agency shall distribute a notice  
15 of its recall action to the publisher for publication in the Indiana  
16 Register. Sections 24 and 26 of this chapter do not apply to a  
17 readoption action under subsection (c).

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

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

25 (e) If a rule is:

26 (1) subject to sections **24.5, 24.7**, 31, and 33 of this chapter;

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

28 (3) readopted under subsection (c);

29 the agency shall resubmit the readopted version of the recalled rule to  
30 **the administrative rules oversight committee**, the attorney general,  
31 and the governor for approval. The attorney general and the governor  
32 have the full statutory period to approve or disapprove the readopted  
33 rule. If the recalled rule was submitted to the office of management and  
34 budget under section 28 of this chapter, the agency shall resubmit the  
35 readopted version of a recalled rule to the office of management and  
36 budget with sufficient information for the office of management and  
37 budget to evaluate whether its initial fiscal impact statement under  
38 section 28 of this chapter needs to be revised. The office of  
39 management and budget shall revise a fiscal impact statement under  
40 section 28 of this chapter if the fiscal impact of the readopted rule is  
41 substantially different from the recalled rule. The agency also shall  
42 comply with any other applicable approval requirement provided by



1 statute.

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

4 SECTION 10. IC 4-22-9-3, AS AMENDED BY P.L.123-2006,  
5 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
6 JULY 1, 2020]: Sec. 3. (a) **Except as provided in subsection (d)**, any  
7 rule that has been adopted in conformity with IC 4-22-2 (including a  
8 matter incorporated by reference into a rule) shall be judicially noticed  
9 by all courts and agencies of this state.

10 (b) Subject to subsection (c), the official publication of a rule in the  
11 Indiana Register or the Indiana Administrative Code, including the  
12 official publication of rules published only in electronic format after  
13 July 1, 2006, shall be considered prima facie evidence that the rule was  
14 adopted in conformity with IC 4-22-2 and that the text published is the  
15 text adopted.

16 (c) The 1979 edition of the Indiana Administrative Code shall be  
17 conclusively presumed to contain the accurate, correct, and complete  
18 text of all rules in effect on December 31, 1978. All rules filed with the  
19 secretary of state before December 31, 1978, and not compiled in the  
20 1979 edition of the Indiana Administrative Code are void.

21 **(d) If the administrative rules oversight committee has filed a**  
22 **certified written objection to a proposed rule or emergency rule**  
23 **under IC 4-22-2-24.7 that is subsequently adopted by the agency,**  
24 **in any subsequent action for judicial review concerning the rule or**  
25 **enforcement of the rule the agency bears the burden of proof to**  
26 **establish that the rule:**

- 27 (1) is consistent with the intent of the general assembly;  
28 (2) does not create an unfunded mandate on any state agency  
29 or political subdivision;  
30 (3) complies with the standards in IC 4-22-2-19.5;  
31 (4) does not exceed the authority of the agency; and  
32 (5) is not arbitrary.

33 **If the agency fails to meet the burden of proof, the court shall**  
34 **declare the whole or part of the rule invalid.**

35 (e) A certified objection to a rule by the administrative rules  
36 oversight committee under IC 4-22-2-24.7 is admissible in a  
37 proceeding only to establish the fact of the certified objection. The  
38 lack of certified objection to a rule by the administrative rules  
39 oversight committee under IC 4-22-2-24.7 is not an implied  
40 authorization of substantive or procedural lawfulness by the  
41 general assembly.

