



Reprinted
February 26, 2016

ENGROSSED HOUSE BILL No. 1082

DIGEST OF HB 1082 (Updated February 25, 2016 3:06 pm - DI 69)

Citations Affected: IC 13-14.

Synopsis: Environmental rules and policies. Requires the department of environmental management (IDEM) to report annually to the legislative council: (1) any administrative rule adopted by the environmental rules board (board) or proposed by IDEM; (2) any operating policy or procedure instituted or altered by IDEM; and (3) any nonrule policy or statement put into effect by IDEM; during the previous year that constitutes a change in the policy previously followed by IDEM under the provisions of IC 13 and the rules adopted by the board. Provides that, if notice given by IDEM concerning a proposed rule identifies an element of the proposed rule that imposes a restriction or requirement more stringent than a restriction or requirement imposed under federal law, the proposed rule does not become effective until the adjournment sine die of the regular session of the general assembly that begins after IDEM provides the notice. Provides an exception for the adoption of emergency rules in response to emergency situations.

Effective: July 1, 2016.

Wolkins, VanNatter, Goodin, Baird

(SENATE SPONSORS — CHARBONNEAU, RAATZ, PERFECT, BROWN L,
SCHNEIDER, FORD, BANKS)

January 5, 2016, read first time and referred to Committee on Environmental Affairs.
January 28, 2016, amended, reported — Do Pass.
February 1, 2016, read second time, amended, ordered engrossed.
February 2, 2016, engrossed. Read third time, passed. Yeas 64, nays 33.

SENATE ACTION

February 8, 2016, read first time and referred to Committee on Environmental Affairs.
February 23, 2016, amended, reported favorably — Do Pass.
February 25, 2016, read second time, amended, ordered engrossed.

EH 1082—LS 6453/DI 55



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Second Regular Session of the 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1082

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 13-14-1-11.7 IS ADDED TO THE INDIANA
2 CODE AS A NEW SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2016]: **Sec. 11.7. (a) Before July 1 of each**
4 **year, the department shall report:**
5 (1) **any administrative rule that has been:**
6 (A) **proposed by the department; or**
7 (B) **adopted by the board;**
8 (2) **any operating policy or procedure that has been instituted**
9 **or altered by the department; and**
10 (3) **any nonrule policy or statement that has been proposed or**
11 **put into effect under section 11.5 of this chapter;**
12 **since the preceding July 1 that constitutes a change in the policy**
13 **previously followed by the department under this title and the rules**
14 **adopted by the board.**
15 (b) **The report required under subsection (a) shall be submitted**
16 **in an electronic format under IC 5-14-6 to the executive director of**
17 **the legislative services agency, who shall present it to the legislative**

EH 1082—LS 6453/DI 55



1 **council established by IC 2-5-1.1-1 before the following September**
 2 **1.**

3 SECTION 2. IC 13-14-9-4, AS AMENDED BY P.L.100-2006,
 4 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 5 JULY 1, 2016]: Sec. 4. (a) The department shall provide notice in the
 6 Indiana Register of the second public comment period required by
 7 section 2 of this chapter. A notice provided under this section must do
 8 the following:

9 (1) Contain the full text of the proposed rule, to the extent
 10 required under IC 4-22-2-24(c).

11 (2) Contain a summary of the response of the department to
 12 written comments submitted under section 3 of this chapter
 13 during the first public comment period.

14 (3) Request the submission of comments, including suggestions
 15 of specific amendments to the language contained in the proposed
 16 rule.

17 (4) Contain the full text of the commissioner's written findings
 18 under section 7 of this chapter, if applicable.

19 (5) Identify each element of the proposed rule that imposes a
 20 restriction or requirement on persons to whom the proposed rule
 21 applies that:

22 (A) is more stringent than a restriction or requirement imposed
 23 under federal law; or

24 (B) applies in a subject area in which federal law does not
 25 impose a restriction or requirement.

26 (6) With respect to each element identified under subdivision (5),
 27 identify:

28 (A) the environmental circumstance or hazard that dictates the
 29 imposition of the proposed restriction or requirement to
 30 protect human health and the environment;

31 (B) examples in which federal law is inadequate to provide the
 32 protection referred to in clause (A); and

33 (C) the:

34 (i) estimated fiscal impact; and

35 (ii) expected benefits;

36 based on the extent to which the proposed rule is more
 37 stringent than the restrictions or requirements of federal law,
 38 or on the creation of restrictions or requirements in a subject
 39 area in which federal law does not impose restrictions or
 40 requirements.

41 (7) For any element of the proposed rule that imposes a restriction
 42 or requirement that is more stringent than a restriction or



1 requirement imposed under federal law or that applies in a subject
 2 area in which federal law does not impose restrictions or
 3 requirements, describe the availability for public inspection of all
 4 materials relied upon by the department in the development of the
 5 proposed rule, including, if applicable:

- 6 (A) health criteria;
- 7 (B) analytical methods;
- 8 (C) treatment technology;
- 9 (D) economic impact data;
- 10 (E) environmental assessment data;
- 11 (F) analyses of methods to effectively implement the proposed
- 12 rule; and
- 13 (G) other background data.

14 (b) The notice required under subsection (a):

- 15 (1) shall be published electronically in the Indiana Register under
- 16 procedures established by the publisher; **and**
- 17 **(2) if any element of the proposed rule to which the notice**
- 18 **relates imposes a restriction or requirement that is more**
- 19 **stringent than a restriction or requirement imposed under**
- 20 **federal law, shall be submitted in an electronic format under**
- 21 **IC 5-14-6 to the executive director of the legislative services**
- 22 **agency, who shall present the notice to the legislative council**
- 23 **established by IC 2-5-1.1-1.**

24 (c) If the notice provided by the department concerning a
 25 proposed rule identifies, under subsection (a)(5), an element of the
 26 proposed rule that imposes a restriction or requirement more
 27 stringent than a restriction or requirement imposed under federal
 28 law, the proposed rule shall not become effective under this
 29 chapter until the adjournment sine die of the regular session of the
 30 general assembly that begins after the department provides the
 31 notice.

32 (d) Subsections (b)(2) and (c) do not prohibit or restrict the
 33 commissioner, the department, or the board from:

- 34 (1) adopting emergency rules under IC 4-22-2-37.1;
- 35 (2) taking emergency action under IC 13-14-10; or
- 36 (3) temporarily:
 - 37 (A) altering ordinary operating policies or procedures; or
 - 38 (B) implementing new policies or procedures;

39 in response to an emergency situation.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred House Bill 1082, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between lines 8 and 9, begin a new paragraph and insert:

"(c) The board may adopt a rule or standard if:

(1) a corresponding regulation or standard established under federal law does not exist; and

(2) the rule or standard is adopted by the board under appropriate general or specific statutory authority granted to the board.

(d) If a regulation is established under federal law that is less stringent than a corresponding state rule, the state rule remains in effect until the earlier of the date:

(1) the state rule is amended to conform to the less stringent federal regulation; or

(2) specific statutory authority is granted to the department to enforce the rule that is more stringent than the federal regulation;

subject to IC 13-14-8-12.

SECTION 2. IC 13-14-8-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 12. The department may not enforce a rule or standard after July 1, 2016, that is more stringent than a corresponding regulation or standard established under federal law unless specific statutory authority is granted to the department to enforce the more stringent rule or standard as provided in IC 13-13-8-15(d)(2)."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1082 as introduced.)

WOLKINS

Committee Vote: yeas 7, nays 6.



HOUSE MOTION

Mr. Speaker: I move that House Bill 1082 be amended to read as follows:

Page 2, line 9, after "a" insert "**state**".

Page 2, line 10, after "standard" insert "**adopted or established**".

(Reference is to HB 1082 as printed January 29, 2016.)

PIERCE

COMMITTEE REPORT

Madam President: The Senate Committee on Environmental Affairs, to which was referred House Bill No. 1082, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1082 as reprinted February 2, 2016.)

CHARBONNEAU, Chairperson

Committee Vote: Yeas 8, Nays 0.

SENATE MOTION

Madam President: I move that Engrossed House Bill 1082 be amended to read as follows:

Page 2, after line 2, begin a new paragraph and insert:

"SECTION 2. IC 13-14-9-4, AS AMENDED BY P.L.100-2006, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 4. (a) The department shall provide notice in the Indiana Register of the second public comment period required by section 2 of this chapter. A notice provided under this section must do the following:

- (1) Contain the full text of the proposed rule, to the extent required under IC 4-22-2-24(c).
- (2) Contain a summary of the response of the department to

EH 1082—LS 6453/DI 55



written comments submitted under section 3 of this chapter during the first public comment period.

(3) Request the submission of comments, including suggestions of specific amendments to the language contained in the proposed rule.

(4) Contain the full text of the commissioner's written findings under section 7 of this chapter, if applicable.

(5) Identify each element of the proposed rule that imposes a restriction or requirement on persons to whom the proposed rule applies that:

(A) is more stringent than a restriction or requirement imposed under federal law; or

(B) applies in a subject area in which federal law does not impose a restriction or requirement.

(6) With respect to each element identified under subdivision (5), identify:

(A) the environmental circumstance or hazard that dictates the imposition of the proposed restriction or requirement to protect human health and the environment;

(B) examples in which federal law is inadequate to provide the protection referred to in clause (A); and

(C) the:

(i) estimated fiscal impact; and

(ii) expected benefits;

based on the extent to which the proposed rule is more stringent than the restrictions or requirements of federal law, or on the creation of restrictions or requirements in a subject area in which federal law does not impose restrictions or requirements.

(7) For any element of the proposed rule that imposes a restriction or requirement that is more stringent than a restriction or requirement imposed under federal law or that applies in a subject area in which federal law does not impose restrictions or requirements, describe the availability for public inspection of all materials relied upon by the department in the development of the proposed rule, including, if applicable:

(A) health criteria;

(B) analytical methods;

(C) treatment technology;

(D) economic impact data;

(E) environmental assessment data;

(F) analyses of methods to effectively implement the proposed



rule; and

(G) other background data.

(b) The notice required under subsection (a):

(1) shall be published electronically in the Indiana Register under procedures established by the publisher; **and**

(2) **if any element of the proposed rule to which the notice relates imposes a restriction or requirement that is more stringent than a restriction or requirement imposed under federal law, shall be submitted in an electronic format under IC 5-14-6 to the executive director of the legislative services agency, who shall present the notice to the legislative council established by IC 2-5-1.1-1.**

(c) **If the notice provided by the department concerning a proposed rule identifies, under subsection (a)(5), an element of the proposed rule that imposes a restriction or requirement more stringent than a restriction or requirement imposed under federal law, the proposed rule shall not become effective under this chapter until the adjournment sine die of the regular session of the general assembly that begins after the department provides the notice.**

(d) **Subsections (b)(2) and (c) do not prohibit or restrict the commissioner, the department, or the board from:**

(1) **adopting emergency rules under IC 4-22-2-37.1;**

(2) **taking emergency action under IC 13-14-10; or**

(3) **temporarily:**

(A) **altering ordinary operating policies or procedures; or**

(B) **implementing new policies or procedures;**

in response to an emergency situation."

(Reference is to EHB 1082 as printed February 24, 2016.)

CHARBONNEAU

