



Reprinted
February 13, 2015

HOUSE BILL No. 1351

DIGEST OF HB 1351 (Updated February 12, 2015 2:27 pm - DI 87)

Citations Affected: IC 1-1; IC 2-5; IC 4-22.

Synopsis: Agency rulemaking and policymaking. Provides that an agency's statutory authority to regulate and implement programs does not include rulemaking or policymaking authority that is not based upon a federal requirement or that exceeds the authority granted to a federal or state agency under federal statutory authority. Provides an exception that rules, guidelines, standards, or other policies that are not based upon a federal requirement or specific statutory authority may be based upon: (1) the general authority of an agency, subject to limits in the grant of the authority and upon the subject matter; or (2) the power to adopt emergency rules. Requires the legislative services agency (LSA) to review proposed and adopted agency rules, guidelines, standards or other policies. Provides that it is not the intent of the general assembly to have the findings or opinions of the LSA regarding legislative intent or an agency's legal authority to be: (1) used as evidence in any investigation or proceeding; or (2) imputed to the general assembly. Makes changes to the statute requiring distribution of agency statements.

Effective: July 1, 2015.

Wolkins, Harman, Goodin, Judy

January 14, 2015, read first time and referred to Committee on Government and Regulatory Reform.
February 9, 2015, amended, reported — Do Pass.
February 12, 2015, read second time, amended, ordered engrossed.

HB 1351—LS 7386/DI 51



Reprinted
February 13, 2015

First Regular Session of the 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1351

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 1-1-15 IS ADDED TO THE INDIANA CODE AS
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2015]:
4 **Chapter 1. Construction of Statutes Granting Regulatory**
5 **Powers to State Agencies**
6 **Sec. 1. This chapter applies to any entity exercising any part of**
7 **the executive powers of the state, including the administrative**
8 **department and any body corporate and politic or other**
9 **instrumentality of the state.**
10 **Sec. 2. The powers of a governmental agency to adopt rules or**
11 **other policies with the force of law shall be strictly construed.**
12 **Sec. 3. Except as provided in section 4 of this chapter, a grant of**
13 **statutory authority to a governmental agency to regulate the duties**
14 **or other obligations of any person, participate in any federal or**
15 **other governmental program, develop a plan for any federal or**

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1 other governmental program, or adopt rules, guidelines, standards,
 2 or other policies to implement a federal or other governmental
 3 program shall not be construed to grant rulemaking or other
 4 policy making authority that:

- 5 (1) is not based upon a federal requirement;
- 6 (2) exceeds the authority granted to a federal or state agency
 7 under federal statutory authority; or
- 8 (3) is not specifically authorized by state statute.

9 **Sec. 4.** The adoption of rules, guidelines, standards, or other
 10 policies that are not based upon a federal requirement or specific
 11 statutory authority may be based upon:

- 12 (1) the general authority of an agency subject to any limits:
 13 (A) in the grant of the authority; and
 14 (B) upon the subject matter; or
- 15 (2) the power to adopt emergency rules in the manner
 16 provided under IC 4-22-2-37.1.

17 SECTION 2. IC 2-5-1.1-20 IS ADDED TO THE INDIANA CODE
 18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 19 1, 2015]: **Sec. 20.** (a) The legislative services agency shall review,
 20 upon request by a member of the general assembly, any:

- 21 (1) proposed and emergency rule submitted for publication in
 22 the Indiana Register;
- 23 (2) adopted rule submitted to the attorney general under
 24 IC 4-22-2-31 or IC 4-22-2-40;
- 25 (3) proposed and adopted guideline, standard, or other policy
 26 of an agency; or
- 27 (4) rule or policy of the legislative council.

28 The review shall be conducted for the purpose of determining
 29 whether there is a basis for a finding that the agency's rule,
 30 guideline, standard, or policy is in accordance with or exceeds the
 31 agency's rulemaking or policymaking authority conferred by law.

32 (b) The legislative services agency may require the agency to
 33 submit any supporting documentation that the legislative services
 34 agency considers necessary for conducting a review of the agency's
 35 rule, guideline, standard, or other policy. The agency may submit
 36 any additional supporting documentation the agency considers
 37 necessary. Information submitted to the legislative services agency
 38 shall be submitted in an electronic format under IC 5-14-6.

39 (c) The legislative services agency shall annually submit a report
 40 concerning its activities and findings to the legislative council in an
 41 electronic format under IC 5-14-6.

42 (d) It is not the intent of the general assembly in enacting this



1 **section to have the findings, statements, conclusions, motives, or**
 2 **opinions of the legislative services agency or any legislative services**
 3 **agency employee to be used as evidence of:**

- 4 (1) **the legislative intent, purpose, or meaning of an act**
 5 **enacted or resolution adopted by the general assembly; or**
 6 (2) **an agency's legal authority or lack of legal authority to**
 7 **adopt a rule, guideline, standard, or other policy;**

8 **in any investigation, discovery, administrative, civil, or criminal**
 9 **proceeding.**

10 (e) **It is not the intent of the general assembly in enacting this**
 11 **section to impute the motives, findings, statements, conclusions, or**
 12 **opinions of the legislative services agency or any legislative services**
 13 **agency employee regarding the matters described in subsection**
 14 **(d)(1) and (d)(2) to the general assembly.**

15 SECTION 3. IC 4-22-2-28, AS AMENDED BY THE TECHNICAL
 16 CORRECTIONS BILL OF THE 2015 GENERAL ASSEMBLY, IS
 17 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]:

18 Sec. 28. (a) The following definitions apply throughout this section:

- 19 (1) "Ombudsman" refers to the small business ombudsman
 20 designated under IC 4-4-35-8.
 21 (2) "Total estimated economic impact" means the direct annual
 22 economic impact of a rule on all regulated persons after the rule
 23 is fully implemented under subsection (g).

24 (b) The ombudsman:

- 25 (1) shall review a proposed rule that:
 26 (A) imposes requirements or costs on small businesses (as
 27 defined in IC 4-22-2.1-4); and
 28 (B) is referred to the ombudsman by an agency under
 29 IC 4-22-2.1-5(c); and
 30 (2) may review a proposed rule that imposes requirements or
 31 costs on businesses other than small businesses (as defined in
 32 IC 4-22-2.1-4).

33 After conducting a review under subdivision (1) or (2), the ombudsman
 34 may suggest alternatives to reduce any regulatory burden that the
 35 proposed rule imposes on small businesses or other businesses. The
 36 agency that intends to adopt the proposed rule shall respond in writing
 37 to the ombudsman concerning the ombudsman's comments or
 38 suggested alternatives before adopting the proposed rule under section
 39 29 of this chapter.

40 (c) Subject to subsection (e) and not later than fifty (50) days before
 41 the public hearing for a proposed rule required by section 26 of this
 42 chapter, an agency shall submit the proposed rule to the office of



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

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

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

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

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

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



1 twenty-one (21) days before the proposed date of preliminary
2 adoption of the proposed rule.

3 (f) In determining whether a proposed rule has a total estimated
4 economic impact greater than five hundred thousand dollars
5 (\$500,000), the agency proposing the rule shall consider the impact of
6 the rule on any regulated person that already complies with the
7 standards imposed by the rule on a voluntary basis.

8 (g) For purposes of this section, a rule is fully implemented after:

- 9 (1) the conclusion of any phase-in period during which:
10 (A) the rule is gradually made to apply to certain regulated
11 persons; or
12 (B) the costs of the rule are gradually implemented; and
13 (2) the rule applies to all regulated persons that will be affected
14 by the rule.

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

23 (h) An agency shall provide the legislative council in an electronic
24 format under IC 5-14-6 with any analysis, data, and description of
25 assumptions submitted to the office of management and budget under
26 this section or section 40 of this chapter at the same time the agency
27 submits the information to the office of management and budget. The
28 office of management and budget shall provide the ~~administrative rules~~
29 oversight committee with **legislative council in an electronic format**
30 **under IC 5-14-6** any fiscal impact statement and related supporting
31 documentation prepared by the office of management and budget under
32 this section or section 40 of this chapter at the same time the office of
33 management and budget provides the fiscal impact statement to the
34 agency proposing the rule. Information submitted under this subsection
35 must identify the rule to which the information is related by document
36 control number assigned by the publisher.

37 (i) An agency shall provide the legislative council in an electronic
38 format under IC 5-14-6 with any economic impact or fiscal impact
39 statement, including any supporting data, studies, or analysis, prepared
40 for a rule proposed by the agency or subject to readoption by the
41 agency to comply with:

- 42 (1) a requirement in section 19.5 of this chapter to minimize the



1 expenses to regulated entities that are required to comply with the
2 rule;

3 (2) a requirement in section 24 of this chapter to publish a
4 justification of any requirement or cost that is imposed on a
5 regulated entity under the rule;

6 (3) a requirement in IC 4-22-2.1-5 to prepare a statement that
7 describes the annual economic impact of a rule on all small
8 businesses after the rule is fully implemented;

9 (4) a requirement in IC 4-22-2.5-3.1 to conduct a review to
10 consider whether there are any alternative methods of achieving
11 the purpose of the rule that are less costly or less intrusive, or that
12 would otherwise minimize the economic impact of the proposed
13 rule on small businesses;

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

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

19 regardless of whether the total estimated economic impact of the
20 proposed rule is more than five hundred thousand dollars (\$500,000),
21 as soon as practicable after the information is prepared. Information
22 submitted under this subsection must identify the rule to which the
23 information is related by document control number assigned by the
24 publisher.

25 SECTION 4. IC 4-22-7-7, AS AMENDED BY P.L.53-2014,
26 SECTION 63, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
27 JULY 1, 2015]: Sec. 7. (a) This section applies to the following agency
28 statements:

29 (1) Executive orders issued by the governor.

30 (2) Notices that a rule has been disapproved or objected to by the
31 attorney general under IC 4-22-2-32 or IC 4-22-2-38, or
32 disapproved or objected to by the governor under IC 4-22-2-34 or
33 IC 4-22-2-38.

34 (3) Official opinions of the attorney general (excluding advisory
35 letters).

36 (4) Official explanatory opinions of the state board of accounts
37 based on an official opinion of the attorney general.

38 (5) Any other statement:

39 (A) that:

40 (i) interprets, supplements, or implements a statute or rule;

41 (ii) has not been adopted in compliance with IC 4-22-2; **and**

42 (iii) is not intended by its issuing agency to have the effect



- 1 of law; and
 2 ~~(iv)~~ (iii) may be used in conducting the agency's external
 3 affairs; or
 4 (B) that specifies a policy that an agency relies upon to:
 5 (i) enforce a statute or rule;
 6 (ii) conduct an audit or investigation to determine
 7 compliance with a statute or rule; or
 8 (iii) impose a sanction for violation of a statute or rule.
 9 This subdivision includes information bulletins, revenue rulings
 10 (including, subject to IC 6-8.1-3-3.5, a letter of findings), and
 11 other guidelines of an agency.
 12 (6) A statement of the governor concerning extension of an
 13 approval period under IC 4-22-2-34.
 14 (b) Whenever an agency adopts a statement described by subsection
 15 (a), the agency shall distribute electronic copies of the statement to the
 16 publisher for publication and indexing in the Indiana Register (in the
 17 format specified by the publisher under IC 4-22-2) and the copies
 18 required by IC 4-23-7.1-26 to the Indiana library and historical
 19 department. However, if a statement under subsection (a)(5)(B) is in
 20 the form of a manual, book, pamphlet, or reference publication, the
 21 publisher is required to publish only the title of the manual, book, or
 22 reference publication.
 23 (c) Every agency that adopts a statement described under subsection
 24 (a) also shall maintain a current list of all agency statements described
 25 in subsection (a) that it may use in its external affairs. The agency shall
 26 update the listing at least every thirty (30) days. The agency shall
 27 include on the list the name of the agency and the following
 28 information for each statement:
 29 (1) Title.
 30 (2) Identification number.
 31 (3) Date originally adopted.
 32 (4) Date of last revision.
 33 (5) Reference to all other statements described in subsection (a)
 34 that are repealed or amended by the statement.
 35 (6) Brief description of the subject matter of the statement.
 36 (d) At least quarterly, every agency that maintains a list under
 37 subsection (c) shall distribute two (2) copies to the Indiana library and
 38 historical department.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1351, 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, delete lines 10 through 12.

Page 1, line 13, delete "3." and insert "2.".

Page 1, line 15, delete "4." and insert "3.".

Page 1, line 15, delete "specifically authorized by statute," and insert "**provided in section 4 of this chapter,**".

Page 2, delete lines 8 through 27, begin a new line block indented and insert:

"(1) is not based upon a federal requirement;

(2) exceeds the authority granted to a federal or state agency under federal statutory authority; or

(3) is not specifically authorized by state statute.

Sec. 4. The adoption of rules, guidelines, standards, or other policies that are not based upon a federal requirement or specific statutory authority may be based upon:

(1) the general authority of an agency subject to any limits:

(A) in the grant of the authority; and

(B) upon the subject matter; or

(2) the power to adopt emergency rules in the manner provided under IC 4-22-2-37.1."

Page 2, delete lines 35 through 42, begin a new paragraph and insert:

"(c) The office:

(1) shall review:

(A) each proposed and emergency rule submitted for publication in the Indiana Register; and

(B) each adopted rule submitted to the attorney general under IC 4-22-2-31 or IC 4-22-2-40; and

(2) may review, upon request by a member of the general assembly, each proposed and adopted guideline, standard, or other policy;

for compliance with the standards in IC 1-1-15 and IC 4-22-2-19.5. The office may carry out other duties as assigned by the legislative council or the executive director of the legislative services agency."

Page 3, line 7, delete "rule" and insert "**rule, guideline, standard, or other policy**".

Page 3, line 9, delete "rule" and insert "**rule, guideline, standard, or other policy**".

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Page 3, line 17, after "rules," insert "**guidelines, standards, or other policies**,".

Page 3, line 21, after delete "rule" and insert "**rule, guideline, standard, or other policy**".

Page 3, line 22, delete "IC 1-1-15-6" and insert "**IC 1-1-15**".

Page 3, line 23, delete "rule" and insert "**rule, guideline, standard, or other policy**".

Page 3, line 23, delete "IC 1-1-15-6" and insert "**IC 1-1-15**".

and when so amended that said bill do pass.

(Reference is to HB 1351 as introduced.)

LUCAS

Committee Vote: yeas 7, nays 4.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1351 be amended to read as follows:

Page 1, line 8, delete "body and corporate" and insert "**body corporate and politic**".

Page 2, line 19, delete "As used in this section, "office" refers to the" and insert "**The legislative services agency shall review, upon request by a member of the general assembly, any:**

- (1) proposed and emergency rule submitted for publication in the Indiana Register;**
- (2) adopted rule submitted to the attorney general under IC 4-22-2-31 or IC 4-22-2-40;**
- (3) proposed and adopted guideline, standard, or other policy of an agency; or**
- (4) rule or policy of the legislative council.**

The review shall be conducted for the purpose of determining whether there is a basis for a finding that the agency's rule, guideline, standard, or policy is in accordance with or exceeds the agency's rulemaking or policymaking authority conferred by law."

Page 2, delete lines 20 through 35.

Page 2, line 36, delete "(d)" and insert "**(b)**".

Page 2, line 36, delete "office" and insert "**legislative services agency**".

Page 2, line 37, delete "office of regulatory accountability" and



insert "**legislative services agency**".

Page 2, line 38, delete "the office's review under this section." and insert "**conducting a review of the agency's rule, guideline, standard, or other policy.**".

Page 2, line 40, delete "office" and insert "**legislative services agency**".

Page 2, delete line 42.

Page 3, delete lines 1 through 12.

Page 3, line 13, delete "(f)" and insert "(c)".

Page 3, line 13, delete "office" and insert "**legislative services agency**".

Page 3, delete lines 16 through 19, begin a new paragraph and insert:

"(d) It is not the intent of the general assembly in enacting this section to have the findings, statements, conclusions, motives, or opinions of the legislative services agency or any legislative services agency employee to be used as evidence of:

(1) the legislative intent, purpose, or meaning of an act enacted or resolution adopted by the general assembly; or

(2) an agency's legal authority or lack of legal authority to adopt a rule, guideline, standard, or other policy;

in any investigation, discovery, administrative, civil, or criminal proceeding.

(e) It is not the intent of the general assembly in enacting this section to impute the motives, findings, statements, conclusions, or opinions of the legislative services agency or any legislative services agency employee regarding the matters described in subsection (d)(1) and (d)(2) to the general assembly."

Page 3, line 40, delete "Any".

Page 3, delete lines 41 through 42.

Page 4, line 1, delete "electronic format under IC 5-14-6."

Page 6, delete lines 32 through 42, begin a new paragraph and insert:

"SECTION 4. IC 4-22-7-7, AS AMENDED BY P.L.53-2014, SECTION 63, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 7. (a) This section applies to the following agency statements:

(1) Executive orders issued by the governor.

(2) Notices that a rule has been disapproved or objected to by the attorney general under IC 4-22-2-32 or IC 4-22-2-38, or disapproved or objected to by the governor under IC 4-22-2-34 or IC 4-22-2-38.



(3) Official opinions of the attorney general (excluding advisory letters).

(4) Official explanatory opinions of the state board of accounts based on an official opinion of the attorney general.

(5) Any other statement:

(A) that:

(i) interprets, supplements, or implements a statute or rule;

(ii) has not been adopted in compliance with IC 4-22-2; **and**

~~(iii) is not intended by its issuing agency to have the effect of law; and~~

~~(iv)~~ **(iii)** may be used in conducting the agency's external affairs; or

(B) that specifies a policy that an agency relies upon to:

(i) enforce a statute or rule;

(ii) conduct an audit or investigation to determine compliance with a statute or rule; or

(iii) impose a sanction for violation of a statute or rule.

This subdivision includes information bulletins, revenue rulings (including, subject to IC 6-8.1-3-3.5, a letter of findings), and other guidelines of an agency.

(6) A statement of the governor concerning extension of an approval period under IC 4-22-2-34.

(b) Whenever an agency adopts a statement described by subsection (a), the agency shall distribute electronic copies of the statement to the publisher for publication and indexing in the Indiana Register (in the format specified by the publisher under IC 4-22-2) and the copies required by IC 4-23-7.1-26 to the Indiana library and historical department. However, if a statement under subsection (a)(5)(B) is in the form of a manual, book, pamphlet, or reference publication, the publisher is required to publish only the title of the manual, book, or reference publication.

(c) Every agency that adopts a statement described under subsection (a) also shall maintain a current list of all agency statements described in subsection (a) that it may use in its external affairs. The agency shall update the listing at least every thirty (30) days. The agency shall include on the list the name of the agency and the following information for each statement:

(1) Title.

(2) Identification number.

(3) Date originally adopted.

(4) Date of last revision.

(5) Reference to all other statements described in subsection (a)



that are repealed or amended by the statement.

(6) Brief description of the subject matter of the statement.

(d) At least quarterly, every agency that maintains a list under subsection (c) shall distribute two (2) copies to the Indiana library and historical department."

Delete pages 7 through 8.

Renumber all SECTIONS consecutively.

(Reference is to HB 1351 as printed February 10, 2015.)

WOLKINS

