



March 22, 2005

**ENGROSSED
SENATE BILL No. 298**

DIGEST OF SB 298 (Updated March 21, 2005 10:48 am - DI 87)

Citations Affected: IC 4-22; IC 13-14; IC 13-22; IC 13-23; IC 20-1; noncode.

Synopsis: Administrative rules requiring fiscal review. Makes the following changes to the administrative rulemaking statute requiring an agency to submit a rule with an estimated economic impact greater than \$500,000 to the legislative services agency (LSA) for a fiscal impact statement: (1) Requires the agency to consider the rule's annual economic impact after the rule is fully implemented. (2) Specifies that the \$500,000 threshold applies to the impact on all regulated persons. (3) Requires the agency to submit to LSA a rule meeting the threshold for a fiscal impact statement not later than 50 days before the public hearing on the rule. (4) Requires the agency to consider the rule's impact on an entity that already voluntarily complies with the rule. Makes conforming changes to the statute requiring the education roundtable to determine the fiscal impact of certain recommendations it makes. Requires a state agency to assign a small business regulatory
(Continued next page)

Effective: July 1, 2005.

**Young R Michael, Kenley, Young R,
Hume, Hershman**

(HOUSE SPONSORS — HINKLE, MURPHY, DENBO)

January 6, 2005, read first time and referred to Committee on Governmental Affairs and Interstate Cooperation.

January 27, 2005, amended, reported favorably — Do Pass.

January 31, 2005, read second time, ordered engrossed.

February 1, 2005, engrossed.

February 7, 2005, read third time, passed. Yeas 47, nays 0.

HOUSE ACTION

March 7, 2005, read first time and referred to Committee on Government and Regulatory Reform.

March 21, 2005, amended, reported — Do Pass.

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coordinator for each administrative rule proposed or adopted by the agency. Requires the agency to list the coordinator's contact information in certain published notices and rules. Requires the coordinator to serve as a liaison between the agency and small businesses subject to the rule. In the case of a rule adopted by the department of environmental management (IDEM) or its boards, requires the coordinator for the rule to work with IDEM's ombudsmen and office of voluntary compliance to coordinate services provided to affected small businesses. Requires an agency's director to submit an annual report to the legislative council and the Indiana economic development corporation concerning the activities of the agency's coordinators during the state fiscal year. Provides that a small business that gives voluntary notice to an agency of a violation of a rule is immune from civil or criminal liability resulting from an agency action relating to the violation if the small business: (1) provides the notice within 45 days after discovering the violation; (2) corrects the violation within the time agreed to by the agency and the small business; and (3) cooperates with any investigation by the agency. Provides that immunity is not available if: (1) the violation resulted in serious harm or endangered the public; (2) the small business received a competitive advantage; or (3) the small business has a pattern of rule violations. Provides that certain information provided by a small business relating to a rule violation is confidential. Provides that voluntary notice of a rule violation by a small business is not admissible as evidence, other than in an agency proceeding, to prove liability. Prohibits the air pollution control board and water pollution control board from adopting a rule or standard that is more stringent than a corresponding federal provision established under federal law. (The introduced version of this bill was prepared by the administrative rules oversight committee.)

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March 22, 2005

First Regular Session 114th General Assembly (2005)

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 2004 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 298

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 4-22-2-28, AS AMENDED BY P.L.4-2005,
2 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2005]: Sec. 28. **(a) As used in this section, "total estimated
4 economic impact" means the annual economic impact of a rule on
5 all regulated persons after the rule is fully implemented under
6 subsection (g).**

7 ~~(a)~~ **(b)** The Indiana economic development corporation may review
8 and comment on any proposed rule and may suggest alternatives to
9 reduce any regulatory burden that the proposed rule imposes on
10 businesses. The agency that intends to adopt the proposed rule shall
11 respond in writing to the Indiana economic development corporation
12 concerning the corporation's comments or suggested alternatives before
13 adopting the proposed rule under section 29 of this chapter.

14 ~~(b)~~ **(c) Subject to subsection (f) and not later than fifty (50)**
15 **days before the public hearing required by section 26 of this**
16 **chapter, an agency shall also submit a proposed rule with an to the**
17 **legislative services agency for a review under subsection (d) if the**

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

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

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

23 **The fiscal analysis impact statement must contain an estimate of the**
 24 **total estimated economic impact of the proposed rule and a**
 25 **determination concerning the extent to which the proposed rule creates**
 26 **an unfunded mandate on a state agency or political subdivision. The**
 27 **fiscal analysis impact statement is a public document. The legislative**
 28 **services agency shall make the fiscal analysis impact statement**
 29 **available to interested parties upon request. The agency proposing the**
 30 **rule shall consider the fiscal analysis impact statement as part of the**
 31 **rulemaking process and shall provide the legislative services agency**
 32 **with the information necessary to prepare the fiscal analysis: impact**
 33 **statement. The legislative services agency may also receive and**
 34 **consider applicable information from the regulated entities persons**
 35 **affected by the rule in preparation of the fiscal analysis: impact**
 36 **statement.**

- 37 **(c) (e) With respect to a proposed rule subject to IC 13-14-9:**
- 38 (1) **the department of environmental management shall give**
 39 **written notice to the legislative services agency of the proposed**
 40 **date of preliminary adoption of the proposed rule not less than**
 41 **sixty-six (66) days before that date; and**
 - 42 (2) **the legislative services agency shall prepare the fiscal analysis**

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1 **impact statement** referred to in subsection ~~(b)~~ (d) not later than
2 twenty-one (21) days before the proposed date of preliminary
3 adoption of the proposed rule.

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

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

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

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

26 SECTION 2. IC 4-22-2-28.1 IS ADDED TO THE INDIANA CODE
27 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
28 1, 2005]: **Sec. 28.1. (a) This section applies to a rule for which the**
29 **notice required by section 23 of this chapter is published by an**
30 **agency after June 30, 2005.**

31 **(b) As used in this section, "coordinator" refers to the small**
32 **business regulatory coordinator assigned to a rule by an agency**
33 **under subsection (e).**

34 **(c) As used in this section, "director" refers to the director or**
35 **other administrative head of an agency.**

36 **(d) As used in this section, "small business" means any person,**
37 **firm, corporation, limited liability company, partnership, or**
38 **association that:**

- 39 **(1) is actively engaged in business in Indiana and maintains its**
- 40 **principal place of business in Indiana;**
- 41 **(2) is independently owned and operated;**
- 42 **(3) employs not more than one hundred (100) full-time**

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1 employees; and

2 (4) has gross annual receipts of not more than five million
3 dollars (\$5,000,000).

4 (e) For each:

5 (1) rulemaking action; and

6 (2) rule finally adopted as a result of a rulemaking action;

7 by an agency under this chapter, the agency shall assign one (1)
8 staff person to serve as the agency's small business regulatory
9 coordinator with respect to the proposed or adopted rule. The
10 agency shall assign a staff person to a rule under this subsection
11 based on the person's knowledge of, or experience with, the subject
12 matter of the rule. A staff person may serve as the coordinator for
13 more than one (1) rule proposed or adopted by the agency if the
14 person is qualified by knowledge or experience with respect to each
15 rule. Subject to subsection (f), in the case of a proposed rule, the
16 agency's notice of intent to adopt the rule under section 23 of this
17 chapter must include the name, address, telephone number, and
18 electronic mail address of the small business coordinator for the
19 proposed rule. Subject to subsection (f), in the case of a rule finally
20 adopted by the agency, the final rule, as published in the Indiana
21 Register and the Indiana Administrative Code, must include the
22 name, address, telephone number, and electronic mail address of
23 the coordinator.

24 (f) This subsection applies to a rule adopted by the department
25 of environmental management or any of the boards (as defined in
26 IC 13-11-2-18) under IC 13-14-9. In addition to the information
27 required under subsection (e), the department or the board shall
28 include in the notice provided under section 23 of this chapter and
29 in the publication of the final rule in the Indiana Register and the
30 Indiana Administrative Code:

31 (1) a statement of the resources available to regulated entities
32 through the technical and compliance assistance program
33 established under IC 13-28-3;

34 (2) the name, address, telephone number, and electronic mail
35 address of the ombudsman designated under IC 13-28-3-2;
36 and

37 (3) if applicable, a statement of:

38 (A) the resources available to small businesses through the
39 small business stationary source technical assistance
40 program established under IC 13-28-5; and

41 (B) the name, address, telephone number, and electronic
42 mail address of the ombudsman for small business

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designated under IC 13-28-5-2(3).
The coordinator assigned to the rule under subsection (e) shall work with the ombudsman described in subdivision (2) and the office of voluntary compliance established by IC 13-28-1-1 to coordinate the provision of services required under subsection (g) and IC 13-28-3. If applicable, the coordinator assigned to the rule under subsection (e) shall work with the ombudsman referred to in subdivision (3)(B) to coordinate the provision of services required under subsection (g) and IC 13-28-5.

(g) The coordinator assigned to a rule under subsection (e) shall serve as a liaison between the agency and any small business subject to regulation under the rule. The coordinator shall provide guidance to small businesses affected by the rule on the following:

- (1) Any requirements imposed by the rule, including any reporting, record keeping, or accounting requirements.
- (2) How the agency determines or measures compliance with the rule, including any deadlines for action by regulated entities.
- (3) Any penalties, sanctions, or fines imposed for noncompliance with the rule.
- (4) Any other concerns of small businesses with respect to the rule, including the agency's application or enforcement of the rule in particular situations. However, in the case of a rule adopted under IC 13-14-9, the coordinator assigned to the rule may refer a small business with concerns about the application or enforcement of the rule in a particular situation to the ombudsman designated under IC 13-28-3-2 or, if applicable, under IC 13-28-5-2(3).

(h) The coordinator assigned to a rule under subsection (e) shall provide guidance under this section in response to questions and concerns expressed by small businesses affected by the rule. The coordinator may also issue general guidelines or informational pamphlets to assist small businesses in complying with the rule. Any guidelines or informational pamphlets issued under this subsection shall be made available:

- (1) for public inspection and copying at the offices of the agency under IC 5-14-3; and
- (2) electronically through electronic gateway access.

(i) The coordinator assigned to a rule under subsection (e) shall keep a record of all comments, questions, and complaints received from small businesses with respect to the rule. The coordinator shall deliver the record, along with any accompanying documents

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submitted by small businesses, to the director:
(1) not later than ten (10) days after the date on which the rule is file stamped by the secretary of state under section 35 of this chapter; and
(2) before July 15 of each year during which the rule remains in effect.

The coordinator and the director shall keep confidential any information concerning a small business to the extent that the information is exempt from public disclosure under IC 5-14-3-4.

- (j) Not later than November 1 of each year, the director shall:
 - (1) compile the records received from all of the agency's coordinators under subsection (i);
 - (2) prepare a report that sets forth:
 - (A) the number of comments, complaints, and questions received by the agency from small businesses during the most recent state fiscal year, categorized by the subject matter of the rules involved;
 - (B) the number of complaints or questions reported under clause (A) that were resolved to the satisfaction of the agency and the small businesses involved;
 - (C) the total number of staff serving as coordinators under this section during the most recent state fiscal year;
 - (D) the agency's costs in complying with this section during the most recent state fiscal year; and
 - (E) the projected budget required by the agency to comply with this section during the current state fiscal year; and
 - (3) deliver the report to the legislative council in an electronic format under IC 5-14-6 and to the Indiana economic development corporation established by IC 5-28-3.

SECTION 3. IC 4-22-2-28.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 28.2. (a) This section applies to a violation described in subsection (c) that occurs after June 30, 2005. However, in the case of a violation of a rule adopted under IC 13-14-9 by the department of environmental management or any of the boards (as defined in IC 13-11-2-18), the procedures set forth in IC 13-30-4-3 and IC 13-30-7 apply instead of this section.

(b) As used in this section, "small business" has the meaning set forth in section 28.1(d) of this chapter.

(c) Except as provided in subsection (d), a small business that voluntarily provides notice to an agency of the small business's actual or potential violation of a rule adopted by the agency under

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1 this chapter is immune from civil or criminal liability resulting
2 from an agency action relating to the violation if the small business
3 does the following:

4 (1) Provides written notice of the violation to the agency not
5 later than forty-five (45) days after the small business knew or
6 should have known that the violation occurred.

7 (2) Corrects the violation within a time, which in no case may
8 be less than ninety (90) days after the date of the notice
9 described in subdivision (1), agreed to by the agency and the
10 small business.

11 (3) Cooperates with any reasonable request by the agency in
12 any investigation initiated in response to the notice.

13 (d) A small business is not immune from civil or criminal
14 liability relating to a violation of which the small business provides
15 notice under subsection (c) if any of the following apply:

16 (1) The violation resulted in serious harm or in imminent and
17 substantial endangerment to the public health, safety, or
18 welfare.

19 (2) The violation resulted in a substantial economic benefit
20 that afforded the small business a clear advantage over the
21 small business's competitors.

22 (3) The small business has a pattern of continuous or repeated
23 violations of the rule at issue or any other rules of the agency.

24 (e) Information that a small business provides under this
25 section, including actions and documents that identify or describe
26 the small business, to an agency in providing notice of the small
27 business's actual or potential violation of a rule adopted by the
28 agency is confidential, unless a clear and immediate danger to the
29 public health, safety, or welfare or to the environment exists.
30 Information described in this subsection may not be made
31 available for use by the agency for purposes other than the
32 purposes of this section without the consent of the small business.

33 (f) Voluntary notice of an actual or a potential violation of a rule
34 that is provided by a small business under subsection (c) is not
35 admissible as evidence in a proceeding, other than an agency
36 proceeding, to prove liability for the rule violation or the effects of
37 the rule violation.

38 SECTION 4. IC 13-14-8-3 IS AMENDED TO READ AS
39 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) A rule or
40 standard adopted by a board may:

41 (1) make different provisions as required by varying
42 circumstances and conditions for different contaminant sources

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- 1 and for different geographical areas;
- 2 (2) be made applicable to sources outside Indiana that:
- 3 (A) are causing;
- 4 (B) are contributing to; or
- 5 (C) could cause or contribute to;
- 6 environmental pollution in Indiana; and
- 7 (3) make provision for abatement standards and procedures:
- 8 (A) concerning occurrences, emergencies, or pollution; or
- 9 (B) on other short term conditions constituting an acute danger
- 10 to health or to the environment.

11 **(b) A rule or standard adopted by the air pollution control**
 12 **board or water pollution control board may not be more stringent**
 13 **than a corresponding federal provision established under federal**
 14 **law.**

15 SECTION 5. IC 13-14-9-4.2 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4.2. Not less than
 17 fourteen (14) days before the date of preliminary adoption of a
 18 proposed rule by a board, the department shall make available to the
 19 board the fiscal ~~analysis~~ **impact statement** prepared by the legislative
 20 services agency with respect to the proposed rule under
 21 ~~IC 4-22-2-28(e).~~ **IC 4-22-2-28(e).**

22 SECTION 6. IC 13-22-2-4 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) The board shall
 24 adopt rules under IC 4-22-2 and IC 13-14-8 on the proper and safe
 25 transportation, treatment, storage, and disposal of hazardous wastes.
 26 Whenever possible, the rules adopted under this section must allow for
 27 variation in Indiana with regard to population density, climate, and
 28 geology.

29 (b) Rules adopted under this section concerning incinerators used
 30 as hazardous waste facilities may **not** establish requirements **that are**
 31 more stringent than the requirements for hazardous waste incinerators
 32 established by regulations adopted by the Administrator of the United
 33 States Environmental Protection Agency under the following statutes:

- 34 (1) The federal Resource Conservation and Recovery Act (42
- 35 U.S.C. 6901 et seq.).
- 36 (2) The federal Clean Air Act (42 U.S.C. 7401 et seq.), as
- 37 amended by the federal Clean Air Act Amendments of 1990
- 38 (P.L.101-549).

39 SECTION 7. IC 13-23-1-2 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) The board shall
 41 adopt rules under IC 4-22-2 and IC 13-14-8 for the establishment and
 42 operation of the program established under section 1 of this chapter.

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1 (b) The rules **must may** not be **more or** less stringent than the
2 regulations adopted by the Administrator of the United States
3 Environmental Protection Agency under Section 9003 of the federal
4 Solid Waste Disposal Act, as amended (42 U.S.C. 6991b, as amended).

5 (c) The rules adopted under subsection (a) must include the
6 following:

- 7 (1) Requirements for maintaining:
 - 8 (A) a leak detection system;
 - 9 (B) an inventory control system coupled with tank testing; or
 - 10 (C) a comparable system or method;
 11 designed to identify releases in a manner consistent with the
 12 protection of human health and the environment.
- 13 (2) Requirements for maintaining records of any:
 - 14 (A) monitoring;
 - 15 (B) leak detection system;
 - 16 (C) inventory control system or tank testing; or
 - 17 (D) comparable system.
- 18 (3) Requirements for reporting of:
 - 19 (A) any releases; and
 - 20 (B) corrective action taken in response to a release.
- 21 (4) Requirements for ordering or taking corrective action in
 22 response to a release.
- 23 (5) Requirements for closure of underground storage tanks to
 24 prevent future releases of regulated substances into the
 25 environment.
- 26 (6) Requirements for maintaining evidence of financial
 27 responsibility for:
 - 28 (A) taking corrective action; and
 - 29 (B) compensating third parties for bodily injury and property
 30 damage caused by sudden and nonsudden accidental releases
 31 arising from the operation of an underground storage tank.
- 32 (7) Standards of performance for new underground storage tanks.
- 33 (8) Requirements for the following:
 - 34 (A) Providing notice to the department of the existence of
 35 operational and nonoperational underground storage tanks, as
 36 required under 42 U.S.C. 6991a(a).
 - 37 (B) Providing the information required on the form prescribed
 38 under 42 U.S.C. 6991a(b)(2).
 - 39 (C) Providing notice, by any person who sells a tank intended
 40 to be used as an underground storage tank, to the purchaser of
 41 that tank of the owner's notification requirements established
 42 by this article and 42 U.S.C. 6991a(a).

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1 SECTION 8. IC 20-1-20.5-8 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) As used in this
3 section, "total estimated fiscal impact" means the annual fiscal
4 impact of a recommendation on all affected entities after the
5 recommendation is fully implemented under subsection (f).

6 ~~(a)~~ (b) The roundtable shall provide recommendations on subjects
7 related to education to the following:

- 8 (1) The governor.
- 9 (2) The superintendent of public instruction.
- 10 (3) The general assembly.
- 11 (4) The board.

12 ~~(b)~~ (c) Subject to subsection (e), before providing a
13 recommendation under subsection ~~(a)~~; (b), the roundtable shall prepare
14 an analysis of the total estimated fiscal impact that the
15 recommendation will have on the state and all political subdivisions
16 and private schools affected by the recommendation. In preparing an
17 analysis under this subsection, the roundtable shall consider any
18 applicable information submitted by entities affected by the
19 recommendation. The analysis under this subsection must be
20 submitted with the recommendation under subsection ~~(a)~~; (b).

21 ~~(c)~~ (d) Whenever the roundtable provides a recommendation under
22 subsection ~~(a)~~ (b) and the total estimated fiscal impact prepared under
23 subsection ~~(b)~~ (c) indicates that the impact of the recommendation will
24 be at least five hundred thousand dollars (\$500,000), the roundtable
25 shall submit a copy of the recommendation and the fiscal impact
26 analysis prepared under subsection ~~(b)~~ (c) to the legislative services
27 agency for review. Not more than forty-five (45) days after receiving
28 a copy of the recommendation and fiscal analysis, the legislative
29 services agency shall prepare a fiscal analysis impact statement
30 concerning the effect that compliance with the recommendation will
31 have on:

- 32 (1) the state; and
- 33 (2) all political subdivisions and private schools affected by the
34 proposed recommendation.

35 The fiscal analysis impact statement must contain an estimate of the
36 direct total estimated fiscal impact of the recommendation and a
37 determination concerning the extent to which the recommendation
38 creates an unfunded mandate on the state, a political subdivision, or a
39 private school affected by the proposed recommendation. The fiscal
40 analysis impact statement is a public document. The legislative
41 services agency shall make the fiscal analysis impact statement
42 available to interested parties upon request. The roundtable shall

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1 provide the legislative services agency with the information necessary
2 to prepare the fiscal ~~analysis~~ **impact statement**. The legislative
3 services agency may also receive and consider applicable information
4 from the entities affected by the recommendation in preparation of the
5 fiscal ~~analysis~~ **impact statement**. The legislative services agency shall
6 provide copies of its fiscal ~~analysis~~ **impact statement** to each of the
7 persons described in subsection ~~(a)~~ **(b)**.

8 **(e) In determining whether a recommendation under this**
9 **section has a total estimated fiscal impact of at least five hundred**
10 **thousand dollars (\$500,000) on the affected entities, the roundtable**
11 **shall consider the impact of the recommendation on any entity that**
12 **already complies with the standards imposed by the**
13 **recommendation on a voluntary basis, if applicable.**

14 **(f) For purposes of this section, a recommendation is fully**
15 **implemented after:**

- 16 **(1) the conclusion of any phase-in period during which:**
 - 17 **(A) the recommendation is gradually made to apply to**
 - 18 **certain affected entities; or**
 - 19 **(B) the costs of the recommendation are gradually**
 - 20 **implemented; and**
- 21 **(2) the recommendation applies to all affected entities that**
- 22 **will be affected by the recommendation.**

23 **In determining the total estimated fiscal impact of a**
24 **recommendation under this section, the roundtable shall consider**
25 **the annual fiscal impact on all affected entities beginning with the**
26 **first twelve (12) month period or first school year after the**
27 **recommendation is fully implemented, whichever applies. The**
28 **roundtable may use actual or forecasted data and may consider the**
29 **actual and anticipated effects of inflation and deflation. The**
30 **roundtable shall describe any assumptions made and any data used**
31 **in determining the total estimated fiscal impact of a**
32 **recommendation under this section.**

33 **SECTION 9. [EFFECTIVE JULY 1, 2005] (a) IC 4-22-2-28, as**
34 **amended by this act, applies to a rule that is published in the**
35 **Indiana Register under IC 4-22-2-24 or under IC 13-14-9-4(1) after**
36 **June 30, 2005.**

37 **(b) IC 20-1-20.5-8, as amended by this act, applies to a**
38 **recommendation by the education roundtable that is submitted to**
39 **the governor, the state superintendent of public instruction, the**
40 **general assembly, or the Indiana state board of education after**
41 **June 30, 2005.**

42 **(c) This SECTION expires January 1, 2007.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Governmental Affairs and Interstate Cooperation, to which was referred Senate Bill No. 298, 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:

- Page 1, line 4, delete "entities" and insert "**persons**".
 - Page 2, line 2, strike "entities." and insert "**persons.**".
 - Page 2, line 6, delete "entities" and insert "**persons**".
 - Page 2, line 20, strike "entities" and insert "**persons**".
 - Page 2, line 32, strike "entities" and insert "**persons**".
 - Page 3, line 4, delete "entity" and insert "**person**".
 - Page 3, line 10, delete "entities;" and insert "**persons;**".
 - Page 3, line 12, delete "entities" and insert "**persons**".
 - Page 3, line 16, delete "entities" and insert "**persons**".
- Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 298 as introduced.)

RIEGSECKER, Chairperson

Committee Vote: Yeas 9, Nays 0.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred Senate Bill 298, 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, line 1, after "IC 4-22-2-28" insert ", AS AMENDED BY P.L.4-2005, SECTION 20,".

Page 1, line 6, delete "council" and insert "corporation".

Page 1, line 10, delete "council" and insert "corporation".

Page 1, line 11, delete "council's" and insert "corporation's".

Page 3, between lines 24 and 25, begin a new paragraph and insert:

"SECTION 2. IC 4-22-2-28.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 28.1. (a) This section applies to a rule for which the notice required by section 23 of this chapter is published by an agency after June 30, 2005.**

(b) As used in this section, "coordinator" refers to the small business regulatory coordinator assigned to a rule by an agency under subsection (e).

(c) As used in this section, "director" refers to the director or other administrative head of an agency.

(d) As used in this section, "small business" means any person, firm, corporation, limited liability company, partnership, or association that:

- (1) is actively engaged in business in Indiana and maintains its principal place of business in Indiana;**
- (2) is independently owned and operated;**
- (3) employs not more than one hundred (100) full-time employees; and**
- (4) has gross annual receipts of not more than five million dollars (\$5,000,000).**

(e) For each:

- (1) rulemaking action; and**
- (2) rule finally adopted as a result of a rulemaking action;**

by an agency under this chapter, the agency shall assign one (1) staff person to serve as the agency's small business regulatory coordinator with respect to the proposed or adopted rule. The agency shall assign a staff person to a rule under this subsection based on the person's knowledge of, or experience with, the subject matter of the rule. A staff person may serve as the coordinator for more than one (1) rule proposed or adopted by the agency if the person is qualified by knowledge or experience with respect to each

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rule. Subject to subsection (f), in the case of a proposed rule, the agency's notice of intent to adopt the rule under section 23 of this chapter must include the name, address, telephone number, and electronic mail address of the small business coordinator for the proposed rule. Subject to subsection (f), in the case of a rule finally adopted by the agency, the final rule, as published in the Indiana Register and the Indiana Administrative Code, must include the name, address, telephone number, and electronic mail address of the coordinator.

(f) This subsection applies to a rule adopted by the department of environmental management or any of the boards (as defined in IC 13-11-2-18) under IC 13-14-9. In addition to the information required under subsection (e), the department or the board shall include in the notice provided under section 23 of this chapter and in the publication of the final rule in the Indiana Register and the Indiana Administrative Code:

- (1) a statement of the resources available to regulated entities through the technical and compliance assistance program established under IC 13-28-3;
- (2) the name, address, telephone number, and electronic mail address of the ombudsman designated under IC 13-28-3-2; and
- (3) if applicable, a statement of:
 - (A) the resources available to small businesses through the small business stationary source technical assistance program established under IC 13-28-5; and
 - (B) the name, address, telephone number, and electronic mail address of the ombudsman for small business designated under IC 13-28-5-2(3).

The coordinator assigned to the rule under subsection (e) shall work with the ombudsman described in subdivision (2) and the office of voluntary compliance established by IC 13-28-1-1 to coordinate the provision of services required under subsection (g) and IC 13-28-3. If applicable, the coordinator assigned to the rule under subsection (e) shall work with the ombudsman referred to in subdivision (3)(B) to coordinate the provision of services required under subsection (g) and IC 13-28-5.

(g) The coordinator assigned to a rule under subsection (e) shall serve as a liaison between the agency and any small business subject to regulation under the rule. The coordinator shall provide guidance to small businesses affected by the rule on the following:

- (1) Any requirements imposed by the rule, including any

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reporting, record keeping, or accounting requirements.

(2) How the agency determines or measures compliance with the rule, including any deadlines for action by regulated entities.

(3) Any penalties, sanctions, or fines imposed for noncompliance with the rule.

(4) Any other concerns of small businesses with respect to the rule, including the agency's application or enforcement of the rule in particular situations. However, in the case of a rule adopted under IC 13-14-9, the coordinator assigned to the rule may refer a small business with concerns about the application or enforcement of the rule in a particular situation to the ombudsman designated under IC 13-28-3-2 or, if applicable, under IC 13-28-5-2(3).

(h) The coordinator assigned to a rule under subsection (e) shall provide guidance under this section in response to questions and concerns expressed by small businesses affected by the rule. The coordinator may also issue general guidelines or informational pamphlets to assist small businesses in complying with the rule. Any guidelines or informational pamphlets issued under this subsection shall be made available:

(1) for public inspection and copying at the offices of the agency under IC 5-14-3; and

(2) electronically through electronic gateway access.

(i) The coordinator assigned to a rule under subsection (e) shall keep a record of all comments, questions, and complaints received from small businesses with respect to the rule. The coordinator shall deliver the record, along with any accompanying documents submitted by small businesses, to the director:

(1) not later than ten (10) days after the date on which the rule is file stamped by the secretary of state under section 35 of this chapter; and

(2) before July 15 of each year during which the rule remains in effect.

The coordinator and the director shall keep confidential any information concerning a small business to the extent that the information is exempt from public disclosure under IC 5-14-3-4.

(j) Not later than November 1 of each year, the director shall:

(1) compile the records received from all of the agency's coordinators under subsection (i);

(2) prepare a report that sets forth:

(A) the number of comments, complaints, and questions

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received by the agency from small businesses during the most recent state fiscal year, categorized by the subject matter of the rules involved;

(B) the number of complaints or questions reported under clause (A) that were resolved to the satisfaction of the agency and the small businesses involved;

(C) the total number of staff serving as coordinators under this section during the most recent state fiscal year;

(D) the agency's costs in complying with this section during the most recent state fiscal year; and

(E) the projected budget required by the agency to comply with this section during the current state fiscal year; and

(3) deliver the report to the legislative council in an electronic format under IC 5-14-6 and to the Indiana economic development corporation established by IC 5-28-3.

SECTION 3. IC 4-22-2-28.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 28.2. (a) This section applies to a violation described in subsection (c) that occurs after June 30, 2005. However, in the case of a violation of a rule adopted under IC 13-14-9 by the department of environmental management or any of the boards (as defined in IC 13-11-2-18), the procedures set forth in IC 13-30-4-3 and IC 13-30-7 apply instead of this section.

(b) As used in this section, "small business" has the meaning set forth in section 28.1(d) of this chapter.

(c) Except as provided in subsection (d), a small business that voluntarily provides notice to an agency of the small business's actual or potential violation of a rule adopted by the agency under this chapter is immune from civil or criminal liability resulting from an agency action relating to the violation if the small business does the following:

(1) Provides written notice of the violation to the agency not later than forty-five (45) days after the small business knew or should have known that the violation occurred.

(2) Corrects the violation within a time, which in no case may be less than ninety (90) days after the date of the notice described in subdivision (1), agreed to by the agency and the small business.

(3) Cooperates with any reasonable request by the agency in any investigation initiated in response to the notice.

(d) A small business is not immune from civil or criminal liability relating to a violation of which the small business provides

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notice under subsection (c) if any of the following apply:

(1) The violation resulted in serious harm or in imminent and substantial endangerment to the public health, safety, or welfare.

(2) The violation resulted in a substantial economic benefit that afforded the small business a clear advantage over the small business's competitors.

(3) The small business has a pattern of continuous or repeated violations of the rule at issue or any other rules of the agency.

(e) Information that a small business provides under this section, including actions and documents that identify or describe the small business, to an agency in providing notice of the small business's actual or potential violation of a rule adopted by the agency is confidential, unless a clear and immediate danger to the public health, safety, or welfare or to the environment exists. Information described in this subsection may not be made available for use by the agency for purposes other than the purposes of this section without the consent of the small business.

(f) Voluntary notice of an actual or a potential violation of a rule that is provided by a small business under subsection (c) is not admissible as evidence in a proceeding, other than an agency proceeding, to prove liability for the rule violation or the effects of the rule violation.

SECTION 4. IC 13-14-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) A rule or standard adopted by a board may:

(1) make different provisions as required by varying circumstances and conditions for different contaminant sources and for different geographical areas;

(2) be made applicable to sources outside Indiana that:

- (A) are causing;
- (B) are contributing to; or
- (C) could cause or contribute to;

environmental pollution in Indiana; and

(3) make provision for abatement standards and procedures:

- (A) concerning occurrences, emergencies, or pollution; or
- (B) on other short term conditions constituting an acute danger to health or to the environment.

(b) A rule or standard adopted by the air pollution control board or water pollution control board may not be more stringent than a corresponding federal provision established under federal law."

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Page 3, between lines 31 and 32, begin a new paragraph and insert:
"SECTION 7. IC 13-22-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) The board shall adopt rules under IC 4-22-2 and IC 13-14-8 on the proper and safe transportation, treatment, storage, and disposal of hazardous wastes. Whenever possible, the rules adopted under this section must allow for variation in Indiana with regard to population density, climate, and geology.

(b) Rules adopted under this section concerning incinerators used as hazardous waste facilities may **not** establish requirements **that are** more stringent than the requirements for hazardous waste incinerators established by regulations adopted by the Administrator of the United States Environmental Protection Agency under the following statutes:

- (1) The federal Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.).
- (2) The federal Clean Air Act (42 U.S.C. 7401 et seq.), as amended by the federal Clean Air Act Amendments of 1990 (P.L.101-549).

SECTION 8. IC 13-23-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) The board shall adopt rules under IC 4-22-2 and IC 13-14-8 for the establishment and operation of the program established under section 1 of this chapter.

(b) The rules **must may** not be **more or** less stringent than the regulations adopted by the Administrator of the United States Environmental Protection Agency under Section 9003 of the federal Solid Waste Disposal Act, as amended (42 U.S.C. 6991b, as amended).

(c) The rules adopted under subsection (a) must include the following:

- (1) Requirements for maintaining:
 - (A) a leak detection system;
 - (B) an inventory control system coupled with tank testing; or
 - (C) a comparable system or method;
 designed to identify releases in a manner consistent with the protection of human health and the environment.
- (2) Requirements for maintaining records of any:
 - (A) monitoring;
 - (B) leak detection system;
 - (C) inventory control system or tank testing; or
 - (D) comparable system.
- (3) Requirements for reporting of:
 - (A) any releases; and
 - (B) corrective action taken in response to a release.

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- (4) Requirements for ordering or taking corrective action in response to a release.
- (5) Requirements for closure of underground storage tanks to prevent future releases of regulated substances into the environment.
- (6) Requirements for maintaining evidence of financial responsibility for:
 - (A) taking corrective action; and
 - (B) compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of an underground storage tank.
- (7) Standards of performance for new underground storage tanks.
- (8) Requirements for the following:
 - (A) Providing notice to the department of the existence of operational and nonoperational underground storage tanks, as required under 42 U.S.C. 6991a(a).
 - (B) Providing the information required on the form prescribed under 42 U.S.C. 6991a(b)(2).
 - (C) Providing notice, by any person who sells a tank intended to be used as an underground storage tank, to the purchaser of that tank of the owner's notification requirements established by this article and 42 U.S.C. 6991a(a)."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 298 as printed January 28, 2005.)

BUCK, Chair

Committee Vote: yeas 8, nays 1.

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