

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6990

BILL NUMBER: SB 259

NOTE PREPARED: Feb 15, 2005

BILL AMENDED: Feb 10, 2005

SUBJECT: Rulemaking by Instrumentalities of the State.

FIRST AUTHOR: Sen. Landske

FIRST SPONSOR: Rep. Foley

BILL STATUS: As Passed - Senate

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State

Summary of Legislation: (Amended) This bill specifies that an instrumentality of state government (including a body corporate and politic or other corporation exercising essential government functions) is an agency for purposes of the rulemaking procedures set forth in IC 4-22-2. It also prohibits certain instrumentalities from adopting rules without complying with IC 4-22-2. The bill also authorizes instrumentalities to adopt rules necessary or appropriate to perform their duties and exercise their powers.

The bill requires instrumentalities of state government to submit rules:

- (1) in effect before July 1, 2005; and
- (2) adopted at or after a public meeting of the instrumentality, but not in compliance with IC 4-22-2;

to the publisher of the Indiana Register and the Indiana Administrative Code for assignment of a document control number.

It requires an instrumentality to submit the rule to the Secretary of State for filing after the assignment of the document control number. It requires the Secretary of State to submit copies of a rule accepted for filing to the Attorney General.

The bill also allows, rather than requires, the Attorney General to review the rule for legality and to disapprove a rule for specified reasons.

The bill provides that if the attorney general does not issue a notice of disapproval before October 2, 2006, the

rule:

- (1) is considered approved; and
- (2) must be published in the Indiana Register and the Indiana Administrative Code.

(The introduced version of this bill was prepared by the code revision commission.)

Effective Date: Upon passage; July 1, 2005.

Explanation of State Expenditures: (Revised) This bill requires that all the listed instrumentalities follow the rulemaking procedures as set forth in IC 4-22-2. This bill requires these instrumentalities to submit, first to a publisher, then to the Secretary of State (SOS), all rules that were in effect before July 1, 2005, and were adopted at or after a public meeting. The instrumentalities have until October 1, 2005, to submit these rules. The bill provides that after the instrumentality submits the rule to the publisher (currently the Legislative Services Agency (LSA)), and the rule is assigned a document control number, the instrumentality is then required to submit the rule to the SOS. This bill then requires the SOS to provide 2 copies to the Attorney General (AG) within 1 business day of receipt.

The bill also allows, rather than requires, the AG to approve or disapprove a submitted rule not later than April 1, 2006. This bill also requires the approved rules to be published in the next volume of the Indiana Register (IR) and requires codification of the rules in the next publication of the Indiana Administrative Code (IAC) or supplement to the IAC.

This bill will have an administrative cost impact on the SOS, AG, and all the instrumentalities listed in the legislation. The increase in administrative costs to the SOS and AG is indeterminable (*see Secretary of State; and Attorney General*). The administrative cost impact on each instrumentality varies depending upon their current rulemaking procedures (*see categories below*).

The instrumentalities who are specified in this bill are listed below, and categorized by the current language in their enabling statutes regarding rulemaking procedures.

Secretary of State: The administrative cost impact to the SOS is indeterminable. Any increase in cost will be dependant upon the number of rules submitted by these instrumentalities. Assuming that the number of rules submitted is manageable, any increased administrative costs to the AG could presumably be covered through the use of existing staff and resources.

Attorney General: The administrative cost impact on the AG will depend upon the number of rules the AG chooses to review, and the amount of legal advice each instrumentality requests (*see IC 4-22-2-22*). Ultimately the impact will be dependant upon the administrative decisions of the AG.

Instrumentalities Already Required to Follow IC 4-22-2: This bill will have no fiscal impact on the instrumentalities already required to follow IC 4-22-2 rulemaking procedures. These instrumentalities include the following:

Center for Agricultural Science and Heritage
Wireless Enhanced 911 Advisory Board
Bureau of Motor Vehicles Commission

Indiana Port Commission
State Lottery Commission
State Fair Commission

Instrumentalities Whose Statute Is Silent: This bill will increase the administrative costs of instrumentalities whose enabling statute is silent on required rulemaking procedures. Any increase in administrative costs should be able to be covered through the use of existing staff and resources. Any legal counsel required to guide these instrumentalities through the procedures set forth in IC 4-22-2 are required to be provided by the AG. IC 4-22-2-22 states that “The Attorney General is the legal advisor to all agencies in the drafting and preparation of rules. Therefore, there should be no costs to these instrumentalities in seeking legal advise regarding the provisions of this legislation. The instrumentalities whose enabling statute is silent on required rulemaking procedures are the following:

Indiana Education Savings Authority
Law Enforcement Academy Building Commission
State Student Assistance Commission
Commission for Higher Education
Indiana Grain Indemnity Corporation
Intelenet Commission
Indiana Transportation Finance Authority
Indiana Recycling and Energy Development Board
State Office Building Commission
Indiana Emergency Management, Fire and Building Services, and Public Safety Training Foundation
Indiana Natural Resources Foundation
Indiana White River State Park Development Commission
Little Calumet River Basin Development Commission
Recreational Development Commission
Indiana Housing Finance Authority
Indiana Economic Development Corporation

Instrumentalities Whose Statute Contains an Exception to Compliance with IC 4-22-2: This bill will increase the administrative costs of instrumentalities whose enabling statute currently contains an exception to compliance with IC 4-22-2. Any increase in administrative costs should be able to be covered through the use of existing staff and resources. Any legal counsel required to guide these instrumentalities through the procedures set forth in IC 4-22-2 are required to be provided by the AG. IC 4-22-2-22 states that “The Attorney General is the legal advisor to all agencies in the drafting and preparation of rules. Therefore there should be no costs to these instrumentalities in seeking legal advise regarding the provisions of this legislation. The instrumentalities whose enabling statute currently contains an exception to compliance with IC 4-22-2 include the following:

Board for Depositories
Board of Trustees of the Public Employees' Retirement Fund
Indiana Educational Facilities Authority
Board of Trustees of the Indiana State Teachers' Retirement Fund
Indiana Bond Bank
Indiana Health Facility Financing Authority
Indiana Political Subdivision Risk Management Commission

Indiana Development Finance Authority

The Administrative Code and Register Division (ACRD) of the Legislative Services Agency (LSA) is responsible for publication of agency rules in both the monthly Register and the Administrative Code. ACRD estimates that any increase in their administrative costs will be minimal and covered through the use of existing staff and resources.

Explanation of IC 4-22-2: Additional details and description of the administrative rules adoption procedures may be obtained from the LSA.

Explanation of State Revenues:

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Attorney General; all the instrumentalities listed above; Legislative Services Agency.

Local Agencies Affected:

Information Sources: Jason Thompson, AG's Office, 233-2413; LSA's *Checklist for Adoption of Administrative Rules* <http://www.in.gov/legislative/pdf/IACDrftMan.PDF>

Fiscal Analyst: Adam Brown, 317-232-9854.