

Adopted	Rejected
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## COMMITTEE REPORT

YES:	8
NO:	1

### 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:

- 1 Page 1, line 1, after "IC 4-22-2-28" insert ", AS AMENDED BY
- 2 P.L.4-2005, SECTION 20,".
- 3 Page 1, line 6, delete "council" and insert "corporation".
- 4 Page 1, line 10, delete "council" and insert "corporation".
- 5 Page 1, line 11, delete "council's" and insert "corporation's".
- 6 Page 3, between lines 24 and 25, begin a new paragraph and insert:
- 7 "SECTION 2. IC 4-22-2-28.1 IS ADDED TO THE INDIANA
- 8 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 9 [EFFECTIVE JULY 1, 2005]: **Sec. 28.1. (a) This section applies to a**
- 10 **rule for which the notice required by section 23 of this chapter is**
- 11 **published by an agency after June 30, 2005.**
- 12 **(b) As used in this section, "coordinator" refers to the small**
- 13 **business regulatory coordinator assigned to a rule by an agency**
- 14 **under subsection (e).**
- 15 **(c) As used in this section, "director" refers to the director or**

1 other administrative head of an agency.

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

5 (1) is actively engaged in business in Indiana and maintains its  
6 principal place of business in Indiana;

7 (2) is independently owned and operated;

8 (3) employs not more than one hundred (100) full-time  
9 employees; and

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

12 (e) For each:

13 (1) rulemaking action; and

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

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

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

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

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

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

- 26               **(1) Any requirements imposed by the rule, including any**  
 27               **reporting, record keeping, or accounting requirements.**  
 28               **(2) How the agency determines or measures compliance with**  
 29               **the rule, including any deadlines for action by regulated**  
 30               **entities.**  
 31               **(3) Any penalties, sanctions, or fines imposed for**  
 32               **noncompliance with the rule.**  
 33               **(4) Any other concerns of small businesses with respect to the**  
 34               **rule, including the agency's application or enforcement of the**  
 35               **rule in particular situations. However, in the case of a rule**  
 36               **adopted under IC 13-14-9, the coordinator assigned to the rule**  
 37               **may refer a small business with concerns about the**  
 38               **application or enforcement of the rule in a particular situation**

1 to the ombudsman designated under IC 13-28-3-2 or, if  
2 applicable, under IC 13-28-5-2(3).

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

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

12 (2) electronically through electronic gateway access.

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

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

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

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

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

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

29 (2) prepare a report that sets forth:

30 (A) the number of comments, complaints, and questions  
31 received by the agency from small businesses during the  
32 most recent state fiscal year, categorized by the subject  
33 matter of the rules involved;

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

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

- 1           **(D) the agency's costs in complying with this section during**  
 2           **the most recent state fiscal year; and**  
 3           **(E) the projected budget required by the agency to comply**  
 4           **with this section during the current state fiscal year; and**  
 5           **(3) deliver the report to the legislative council in an electronic**  
 6           **format under IC 5-14-6 and to the Indiana economic**  
 7           **development corporation established by IC 5-28-3.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27           (A) are causing;

28           (B) are contributing to; or

29           (C) could cause or contribute to;

30           environmental pollution in Indiana; and

31           (3) make provision for abatement standards and procedures:

32           (A) concerning occurrences, emergencies, or pollution; or

33           (B) on other short term conditions constituting an acute danger  
 34           to health or to the environment.

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

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

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

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

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

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

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

- 29 (1) Requirements for maintaining:  
 30 (A) a leak detection system;  
 31 (B) an inventory control system coupled with tank testing; or  
 32 (C) a comparable system or method;  
 33 designed to identify releases in a manner consistent with the  
 34 protection of human health and the environment.  
 35 (2) Requirements for maintaining records of any:  
 36 (A) monitoring;  
 37 (B) leak detection system;  
 38 (C) inventory control system or tank testing; or

- 1 (D) comparable system.
- 2 (3) Requirements for reporting of:
- 3 (A) any releases; and
- 4 (B) corrective action taken in response to a release.
- 5 (4) Requirements for ordering or taking corrective action in
- 6 response to a release.
- 7 (5) Requirements for closure of underground storage tanks to
- 8 prevent future releases of regulated substances into the
- 9 environment.
- 10 (6) Requirements for maintaining evidence of financial
- 11 responsibility for:
- 12 (A) taking corrective action; and
- 13 (B) compensating third parties for bodily injury and property
- 14 damage caused by sudden and nonsudden accidental releases
- 15 arising from the operation of an underground storage tank.
- 16 (7) Standards of performance for new underground storage tanks.
- 17 (8) Requirements for the following:
- 18 (A) Providing notice to the department of the existence of
- 19 operational and nonoperational underground storage tanks, as
- 20 required under 42 U.S.C. 6991a(a).
- 21 (B) Providing the information required on the form prescribed
- 22 under 42 U.S.C. 6991a(b)(2).
- 23 (C) Providing notice, by any person who sells a tank intended
- 24 to be used as an underground storage tank, to the purchaser of
- 25 that tank of the owner's notification requirements established
- 26 by this article and 42 U.S.C. 6991a(a)."
- 27 Renumber all SECTIONS consecutively.  
(Reference is to SB 298 as printed January 28, 2005.)

**and when so amended that said bill do pass.**

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Representative Buck