

**CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 298**

Citations Affected: IC 4-22-2-28; IC 13-14-9-4.2; IC 20-1-20.5-8.

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 a person 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. **(The introduced version of this bill was prepared by the administrative rules oversight committee.) (This conference committee report removes language: (1) requiring a state agency to assign a small business regulatory coordinator for each administrative rule proposed or adopted by the agency; (2) providing that a small business that gives voluntary notice to an agency of a rule violation is immune from civil or criminal liability resulting from an agency action under certain circumstances; and (3) prohibiting 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.)**

Effective: July 1, 2005.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 298 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 4-22-2-28 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 28. **(a) As used in this**
- 4 **section, "total estimated economic impact" means the annual**
- 5 **economic impact of a rule on all regulated persons after the rule is**
- 6 **fully implemented under subsection (g).**
- 7 ~~(a)~~ **(b)** The Indiana economic development council may review and
- 8 comment on any proposed rule and may suggest alternatives to reduce
- 9 any regulatory burden that the proposed rule imposes on businesses.
- 10 The agency that intends to adopt the proposed rule shall respond in
- 11 writing to the Indiana economic development council concerning the
- 12 council's comments or suggested alternatives before adopting the
- 13 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**
- 18 **agency proposing the rule determines that the rule will have a total**
- 19 **estimated economic impact greater than five hundred thousand dollars**
- 20 **(\$500,000) on the all regulated entities: persons. to the legislative**
- 21 **services agency after the preliminary adoption of the rule. In**
- 22 **determining the total estimated economic impact under this**

1 subsection, the agency shall consider any applicable information
 2 submitted by the regulated persons affected by the rule. To assist
 3 the legislative services agency in preparing the fiscal impact
 4 statement required by subsection (d), the agency shall submit,
 5 along with the proposed rule, the data used and assumptions made
 6 by the agency in determining the total estimated economic impact
 7 of the rule.

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

16 (1) the state; and

17 (2) **all entities persons** regulated by the proposed rule.

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

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

33 (1) the department of environmental management shall give written
 34 notice to the legislative services agency of the proposed date of
 35 preliminary adoption of the proposed rule not less than sixty-six
 36 (66) days before that date; and

37 (2) the legislative services agency shall prepare the fiscal ~~analysis~~
 38 **impact statement** referred to in subsection ~~(b)~~ (d) not later than
 39 twenty-one (21) days before the proposed date of preliminary
 40 adoption of the proposed rule.

41 (f) **In determining whether a proposed rule has a total estimated**
 42 **economic impact greater than five hundred thousand dollars**
 43 **(\$500,000), the agency proposing the rule shall consider the impact**
 44 **of the rule on any regulated person that already complies with the**
 45 **standards imposed by the rule on a voluntary basis.**

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

47 (1) **the conclusion of any phase-in period during which:**

48 (A) **the rule is gradually made to apply to certain regulated**
 49 **persons; or**

50 (B) **the costs of the rule are gradually implemented; and**

51 (2) **the rule applies to all regulated persons that will be affected**

1 **by the rule.**
 2 **In determining the total estimated economic impact of a proposed**
 3 **rule under this section, the agency proposing the rule shall consider**
 4 **the annual economic impact on all regulated persons beginning**
 5 **with the first twelve (12) month period after the rule is fully**
 6 **implemented. The agency may use actual or forecasted data and**
 7 **may consider the actual and anticipated effects of inflation and**
 8 **deflation. The agency shall describe any assumptions made and any**
 9 **data used in determining the total estimated economic impact of a**
 10 **rule under this section.**

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

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

23 ~~(a)~~ **(b)** The roundtable shall provide recommendations on subjects
 24 related to education to the following:

- 25 (1) The governor.
- 26 (2) The superintendent of public instruction.
- 27 (3) The general assembly.
- 28 (4) The board.

29 ~~(b)~~ **(c) Subject to subsection (e)**, before providing a recommendation
 30 under subsection ~~(a)~~ **(b)**, the roundtable shall prepare an analysis of the
 31 **total estimated** fiscal impact that the recommendation will have on the
 32 state **and all** political subdivisions and private schools affected by the
 33 recommendation. **In preparing an analysis under this subsection, the**
 34 **roundtable shall consider any applicable information submitted by**
 35 **entities affected by the recommendation.** The analysis **under this**
 36 **subsection** must be submitted with the recommendation under
 37 subsection ~~(a)~~ **(b)**.

38 ~~(c)~~ **(d)** Whenever the roundtable provides a recommendation under
 39 subsection ~~(a)~~ **(b)** and the **total estimated** fiscal impact prepared under
 40 subsection ~~(b)~~ **(c)** indicates that the impact of the recommendation will
 41 be at least five hundred thousand dollars (\$500,000), the roundtable
 42 shall submit a copy of the recommendation and the fiscal ~~impact~~
 43 **analysis** prepared under subsection ~~(b)~~ **(c)** to the legislative services
 44 agency for review. Not more than forty-five (45) days after receiving
 45 a copy of the recommendation and fiscal analysis, the legislative
 46 services agency shall prepare a fiscal ~~analysis~~ **impact statement**
 47 concerning the effect that compliance with the recommendation will
 48 have on:

- 49 (1) the state; and
- 50 (2) **all** political subdivisions and private schools affected by the
 51 proposed recommendation.

1 The fiscal ~~analysis~~ **impact statement** must contain an estimate of the
 2 direct **total estimated** fiscal impact of the recommendation and a
 3 determination concerning the extent to which the recommendation
 4 creates an unfunded mandate on the state, a political subdivision, or a
 5 private school affected by the proposed recommendation. The fiscal
 6 ~~analysis~~ **impact statement** is a public document. The legislative
 7 services agency shall make the fiscal ~~analysis~~ **impact statement**
 8 available to interested parties upon request. The roundtable shall
 9 provide the legislative services agency with the information necessary
 10 to prepare the fiscal ~~analysis~~ **impact statement**. The legislative
 11 services agency may also receive and consider applicable information
 12 from the entities affected by the recommendation in preparation of the
 13 fiscal ~~analysis~~ **impact statement**. The legislative services agency shall
 14 provide copies of its fiscal ~~analysis~~ **impact statement** to each of the
 15 persons described in subsection ~~(a)~~ **(b)**.

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

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

24 **(1) the conclusion of any phase-in period during which:**

25 **(A) the recommendation is gradually made to apply to**
 26 **certain affected entities; or**

27 **(B) the costs of the recommendation are gradually**
 28 **implemented; and**

29 **(2) the recommendation applies to all affected entities that will**
 30 **be affected by the recommendation.**

31 **In determining the total estimated fiscal impact of a**
 32 **recommendation under this section, the roundtable shall consider**
 33 **the annual fiscal impact on all affected entities beginning with the**
 34 **first twelve (12) month period or first school year after the**
 35 **recommendation is fully implemented, whichever applies. The**
 36 **roundtable may use actual or forecasted data and may consider the**
 37 **actual and anticipated effects of inflation and deflation. The**
 38 **roundtable shall describe any assumptions made and any data used**
 39 **in determining the total estimated fiscal impact of a**
 40 **recommendation under this section.**

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

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

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

51 (Reference is to ESB 298 as printed March 22, 2005.)

Conference Committee Report
on
Engrossed Senate Bill 298

Signed by:

Senator Young R Michael
Chairperson

Representative Hinkle

Senator Hume

Representative Pelath

Senate Conferees

House Conferees