



January 19, 2007

SENATE BILL No. 154

DIGEST OF SB 154 (Updated January 16, 2007 3:58 pm - DI 52)

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

Synopsis: Environmental matters. Allows an environmental rulemaking board to adopt an emergency rule to comply with a date provided by federal law. Establishes a special environmental rulemaking process for adoption or incorporation by reference of federal provisions or for technical or clarifying amendments. Requires the environmental quality service council to study environmental rulemaking and recycling issues.

Effective: Upon passage; July 1, 2007.

Gard

January 8, 2007, read first time and referred to Committee on Energy and Environmental Affairs.
January 18, 2007, amended, reported favorably — Do Pass.

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January 19, 2007

First Regular Session 115th General Assembly (2007)

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 2006 Regular Session of the General Assembly.

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SENATE BILL No. 154

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 4-22-2-37.1, AS AMENDED BY P.L.47-2006,
2 SECTION 2, AS AMENDED BY P.L.91-2006, SECTION 2, AND AS
3 AMENDED BY P.L.123-2006, SECTION 12, IS CORRECTED AND
4 AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
5 PASSAGE]: Sec. 37.1. (a) This section applies to a rulemaking action
6 resulting in any of the following rules:
7 (1) An order adopted by the commissioner of the Indiana
8 department of transportation under IC 9-20-1-3(d) or
9 IC 9-21-4-7(a) and designated by the commissioner as an
10 emergency rule.
11 (2) An action taken by the director of the department of natural
12 resources under IC 14-22-2-6(d) or IC 14-22-6-13.
13 (3) An emergency temporary standard adopted by the
14 occupational safety standards commission under
15 IC 22-8-1.1-16.1.
16 (4) An emergency rule adopted by the solid waste management
17 board under IC 13-22-2-3 and classifying a waste as hazardous.

SB 154—LS 6897/DI 52+



- 1 (5) A rule, other than a rule described in subdivision (6), adopted
- 2 by the department of financial institutions under IC 24-4.5-6-107
- 3 and declared necessary to meet an emergency.
- 4 (6) A rule required under IC 24-4.5-1-106 that is adopted by the
- 5 department of financial institutions and declared necessary to
- 6 meet an emergency under IC 24-4.5-6-107.
- 7 (7) A rule adopted by the Indiana utility regulatory commission to
- 8 address an emergency under IC 8-1-2-113.
- 9 (8) An emergency rule adopted by the state lottery commission
- 10 under IC 4-30-3-9.
- 11 (9) A rule adopted under IC 16-19-3-5 that the executive board of
- 12 the state department of health declares is necessary to meet an
- 13 emergency.
- 14 (10) An emergency rule adopted by the Indiana finance authority
- 15 under IC 8-21-12.
- 16 (11) An emergency rule adopted by the insurance commissioner
- 17 under IC 27-1-23-7.
- 18 (12) An emergency rule adopted by the Indiana horse racing
- 19 commission under IC 4-31-3-9.
- 20 (13) An emergency rule adopted by the air pollution control
- 21 board, the solid waste management board, or the water pollution
- 22 control board under IC 13-15-4-10(4) or to comply with a
- 23 deadline required by **or other date provided by** federal law,
- 24 provided:
- 25 (A) the variance procedures are included in the rules; and
- 26 (B) permits or licenses granted during the period the
- 27 emergency rule is in effect are reviewed after the emergency
- 28 rule expires.
- 29 (14) An emergency rule adopted by the Indiana election
- 30 commission under IC 3-6-4.1-14.
- 31 (15) An emergency rule adopted by the department of natural
- 32 resources under IC 14-10-2-5.
- 33 (16) An emergency rule adopted by the Indiana gaming
- 34 commission under *IC 4-32.2-3-3(b)*, IC 4-33-4-2, IC 4-33-4-3, or
- 35 IC 4-33-4-14.
- 36 (17) An emergency rule adopted by the alcohol and tobacco
- 37 commission under IC 7.1-3-17.5, IC 7.1-3-17.7, or
- 38 IC 7.1-3-20-24.4.
- 39 (18) An emergency rule adopted by the department of financial
- 40 institutions under IC 28-15-11.
- 41 (19) An emergency rule adopted by the office of the secretary of
- 42 family and social services under IC 12-8-1-12.

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- 1 (20) An emergency rule adopted by the office of the children's
- 2 health insurance program under IC 12-17.6-2-11.
- 3 (21) An emergency rule adopted by the office of Medicaid policy
- 4 and planning under IC 12-15-41-15.
- 5 (22) An emergency rule adopted by the Indiana state board of
- 6 animal health under IC 15-2.1-18-21.
- 7 (23) An emergency rule adopted by the board of directors of the
- 8 Indiana education savings authority under IC 21-9-4-7.
- 9 (24) An emergency rule adopted by the Indiana board of tax
- 10 review under IC 6-1.1-4-34 **(repealed)**.
- 11 (25) An emergency rule adopted by the department of local
- 12 government finance under IC 6-1.1-4-33 **(repealed)**.
- 13 (26) An emergency rule adopted by the boiler and pressure vessel
- 14 rules board under IC 22-13-2-8(c).
- 15 (27) An emergency rule adopted by the Indiana board of tax
- 16 review under IC 6-1.1-4-37(1) **(repealed)** or an emergency rule
- 17 adopted by the department of local government finance under
- 18 IC 6-1.1-4-36(j) **(repealed)** or IC 6-1.1-22.5-20.
- 19 (28) An emergency rule adopted by the board of the Indiana
- 20 economic development corporation under IC 5-28-5-8.
- 21 (29) A rule adopted by the department of financial institutions
- 22 under IC 34-55-10-2.5.
- 23 (30) *A rule adopted by the Indiana finance authority:*
- 24 *(A) under IC 8-15.5-7 approving user fees (as defined in*
- 25 *IC 8-15.5-2-10) provided for in a public-private agreement*
- 26 *under IC 8-15.5;*
- 27 *(B) under IC 8-15-2-17.2(a)(10):*
- 28 *(i) establishing enforcement procedures; and*
- 29 *(ii) making assessments for failure to pay required tolls;*
- 30 *(C) under IC 8-15-2-14(a)(3) authorizing the use of and*
- 31 *establishing procedures for the implementation of the*
- 32 *collection of user fees by electronic or other nonmanual*
- 33 *means; or*
- 34 *(D) to make other changes to existing rules related to a toll*
- 35 *road project to accommodate the provisions of a*
- 36 *public-private agreement under IC 8-15.5.*
- 37 (b) The following do not apply to rules described in subsection (a):
- 38 (1) Sections 24 through 36 of this chapter.
- 39 (2) IC 13-14-9.
- 40 (c) After a rule described in subsection (a) has been adopted by the
- 41 agency, the agency shall submit the rule to the publisher for the
- 42 assignment of a document control number. The agency shall submit the

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1 rule in the form required by section 20 of this chapter and with the
 2 documents required by section 21 of this chapter. The publisher shall
 3 determine the *number of copies format* of the rule and other documents
 4 to be submitted under this subsection.

5 (d) After the document control number has been assigned, the
 6 agency shall submit the rule to the *secretary of state publisher* for
 7 filing. The agency shall submit the rule in the form required by section
 8 20 of this chapter and with the documents required by section 21 of this
 9 chapter. The *secretary of state publisher* shall determine the *number*
 10 *of copies format* of the rule and other documents to be submitted under
 11 this subsection.

12 (e) Subject to section 39 of this chapter, the *secretary of state*
 13 *publisher* shall:

- 14 (1) accept the rule for filing; and
 15 (2) ~~file stamp and indicate electronically record~~ the date and time
 16 that the rule is accepted. ~~on every duplicate original copy~~
 17 ~~submitted.~~

18 (f) A rule described in subsection (a) takes effect on the latest of the
 19 following dates:

- 20 (1) The effective date of the statute delegating authority to the
 21 agency to adopt the rule.
 22 (2) The date and time that the rule is accepted for filing under
 23 subsection (e).
 24 (3) The effective date stated by the adopting agency in the rule.
 25 (4) The date of compliance with every requirement established by
 26 law as a prerequisite to the adoption or effectiveness of the rule.

27 (g) Subject to subsection (h), IC 14-10-2-5, IC 14-22-2-6,
 28 IC 22-8-1.1-16.1, and IC 22-13-2-8(c), and except as provided in
 29 subsections (j), ~~and~~ (k), ~~and~~ (l), a rule adopted under this section
 30 expires not later than ninety (90) days after the rule is accepted for
 31 filing under subsection (e). Except for a rule adopted under subsection
 32 (a)(13), (a)(24), (a)(25), or (a)(27), the rule may be extended by
 33 adopting another rule under this section, but only for one (1) extension
 34 period. The extension period for a rule adopted under subsection
 35 (a)(28) may not exceed the period for which the original rule was in
 36 effect. A rule adopted under subsection (a)(13) may be extended for
 37 two (2) extension periods. Subject to subsection (j), a rule adopted
 38 under subsection (a)(24), (a)(25), or (a)(27) may be extended for an
 39 unlimited number of extension periods. Except for a rule adopted under
 40 subsection (a)(13), for a rule adopted under this section to be effective
 41 after one (1) extension period, the rule must be adopted under:

- 42 (1) sections 24 through 36 of this chapter; or

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1 (2) IC 13-14-9;
 2 as applicable.
 3 (h) A rule described in subsection (a)(6), (a)(8), (a)(12), or (a)(29)
 4 expires on the earlier of the following dates:
 5 (1) The expiration date stated by the adopting agency in the rule.
 6 (2) The date that the rule is amended or repealed by a later rule
 7 adopted under sections 24 through 36 of this chapter or this
 8 section.
 9 (i) This section may not be used to readopt a rule under IC 4-22-2.5.
 10 (j) A rule described in subsection (a)(24) or (a)(25) expires not later
 11 than January 1, 2006.
 12 (k) A rule described in subsection (a)(28) expires on the expiration
 13 date stated by the board of the Indiana economic development
 14 corporation in the rule.
 15 (l) *A rule described in subsection (a)(30) expires on the expiration*
 16 *date stated by the Indiana finance authority in the rule.*
 17 SECTION 2. IC 13-14-9-1, AS AMENDED BY P.L.100-2006,
 18 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 UPON PASSAGE]: Sec. 1. (a) Except as provided in ~~section~~ **sections**
 20 **8 and 14** of this chapter, this chapter applies to the following:
 21 (1) A board.
 22 (2) The underground storage tank financial assurance board
 23 established by IC 13-23-11-1.
 24 (b) In addition to the requirements of IC 4-22-2 and IC 13-14-8, a
 25 board may not adopt a rule except in accordance with this chapter.
 26 SECTION 3. IC 13-14-9-8 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) Unless a
 28 board determines ~~under section 5(c)(2) of this chapter~~ that a proposed
 29 rule should be subject to additional comments **or makes a**
 30 **determination described in subsection (f)**, sections ~~3 and 4~~ **2**
 31 **through 14** of this chapter do not apply to a rulemaking action if the
 32 commissioner determines that:
 33 (1) the proposed rule constitutes:
 34 (A) an adoption or incorporation by reference of a federal law,
 35 regulation, or rule that:
 36 (i) is or will be applicable to Indiana; and
 37 (ii) contains no amendments that have a substantive effect
 38 on the scope or intended application of the federal law or
 39 rule;
 40 (B) a technical amendment with no substantive effect on an
 41 existing Indiana rule; or
 42 (C) a substantive amendment to an existing Indiana rule, the

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1 primary and intended purpose of which is to clarify the
 2 existing rule; and
 3 (2) the proposed rule is of such nature and scope that there is no
 4 reasonably anticipated benefit to the environment or the persons
 5 referred to in section 7(a)(2) of this chapter from the following:
 6 (A) Exposing the proposed rule to diverse public comment
 7 under section 3 or 4 of this chapter.
 8 (B) Affording interested or affected parties the opportunity to
 9 be heard under section 3 or 4 of this chapter.
 10 (C) Affording interested or affected parties the opportunity to
 11 develop evidence in the record collected under sections 3 and
 12 4 of this chapter.
 13 (b) If the commissioner makes a determination under subsection (a),
 14 the commissioner shall prepare written findings under this section. The
 15 full text of the commissioner's written findings shall be
 16 ~~(1) published in the Indiana Register before the public meeting~~
 17 ~~held under section 5(a)(1) of this chapter; and~~
 18 ~~(2) included in:~~
 19 **(1) the notice of adoption of the proposed rule; and**
 20 **(2) the written materials to be considered by the board at the**
 21 **public meeting hearing held under this section. 5(a)(1) of this**
 22 **chapter.**
 23 **(c) The notice of adoption of a proposed rule under this section**
 24 **must:**
 25 **(1) be published in the Indiana Register; and**
 26 **(2) include the following:**
 27 **(A) Draft rule language that includes the language**
 28 **described in subsection (a)(1).**
 29 **(B) A written comment period of at least thirty (30) days.**
 30 **(C) A notice of public hearing before the appropriate**
 31 **board.**
 32 **(d) The department shall include the following in the written**
 33 **materials to be considered by the board at the public hearing**
 34 **referred to in subsection (c):**
 35 **(1) The full text of the proposed rule as most recently**
 36 **prepared by the department.**
 37 **(2) Written responses of the department to written comments**
 38 **received during the comment period referred to in subsection**
 39 **(c).**
 40 **(3) The commissioner's findings under subsection (b).**
 41 **(e) At the public hearing referred to in subsection (c), the board**
 42 **may:**

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- 1 **(1) adopt the proposed rule;**
- 2 **(2) reject the proposed rule;**
- 3 **(3) determine that additional public comment is necessary; or**
- 4 **(4) determine to reconsider the proposed rule at a subsequent**
- 5 **board meeting.**
- 6 **(f) If the board determines under subsection (e) that additional**
- 7 **public comment is necessary, the department shall publish a second**
- 8 **notice in accordance with section 4 of this chapter and complete the**
- 9 **rulemaking in accordance with this chapter.**
- 10 SECTION 4. IC 13-14-9-12 IS AMENDED TO READ AS
- 11 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. The board may
- 12 reject a proposed rule under section 9(4) of this chapter if one (1) of the
- 13 following conditions exists:
- 14 (1) The following occurs or has occurred:
- 15 (A) under section 8 of this chapter, sections 3 and 4 of this
- 16 chapter did not apply to the proposed rule; and
- 17 (B) either:
- 18 (i) the board determines that necessary amendments to the
- 19 proposed rule will affect persons that reasonably require an
- 20 opportunity to comment under section 4 of this chapter,
- 21 considering the criteria set forth in section ~~8(2)~~ **8(a)(2)** of
- 22 this chapter; or
- 23 (ii) the board determines that due to the fundamental or
- 24 inherent structure or content of the proposed rule, the only
- 25 reasonably anticipated method of developing a rule
- 26 acceptable to the board is to require the department to
- 27 redraft the rule and to obtain the public comments under
- 28 section 4 of this chapter. ~~or~~
- 29 (2) The following occurs or has occurred:
- 30 (A) the proposed rule was subject to sections 3 and 4 of this
- 31 chapter; and
- 32 (B) either:
- 33 (i) the board makes a determination set forth in subdivision
- 34 (1)(B)(i) or (1)(B)(ii); or
- 35 (ii) the board determines that, due to a procedural or other
- 36 defect in the implementation of the requirements under
- 37 sections 3 and 4 of this chapter, an interested or affected
- 38 party will be unfairly and substantially prejudiced if the
- 39 public comment period under section 4 of this chapter is not
- 40 again afforded and that no reasonable alternative method to
- 41 obtain public comments is available to the interested or
- 42 affected party other than the public comment period under

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1 section 4 of this chapter.
 2 SECTION 5. [EFFECTIVE JULY 1, 2007] (a) The environmental
 3 quality service council established under IC 13-13-7 shall study and
 4 make findings and recommendations concerning the following:
 5 (1) Shortening the environmental rulemaking process for
 6 rules adopted under IC 13 by considering the following:
 7 (A) Other state and local agency rulemaking processes.
 8 (B) Other state environmental rulemaking processes.
 9 (C) Negotiated rulemaking.
 10 (D) Steps and requirements of rulemaking.
 11 (E) Professional boards and the relationship between
 12 boards and the office of environmental adjudication.
 13 (2) The goals, funding, markets, and structure of recycling in
 14 Indiana.
 15 (b) The environmental quality service council shall include its
 16 findings and recommendations developed under subsection (a) in
 17 the council's 2007 final report to the legislative council.
 18 (c) This SECTION expires January 1, 2008.
 19 SECTION 6. An emergency is declared for this act.

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COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 154, 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 8, delete lines 13 through 14, begin a new line block indented and insert:

"(2) The goals, funding, markets, and structure of recycling in Indiana."

and when so amended that said bill do pass.

(Reference is to SB 154 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 11, Nays 0.

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