



Reprinted
February 28, 2012

ENGROSSED HOUSE BILL No. 1280

DIGEST OF HB 1280 (Updated February 27, 2012 4:57 pm - DI 58)

Citations Affected: IC 4-3; IC 4-21.5; IC 4-22; IC 8-1; IC 25-26; IC 35-48; noncode.

Synopsis: Regulatory matters. Requires the office of management and budget (OMB) to advise and assist state agencies and instrumentalities with the implementation of continuous process improvement techniques. Requires the OMB to prepare for each administrative rule that: (1) has been adopted; and (2) has taken effect; after December 31, 2011, a cost benefit analysis with respect to the first three years following the rule's effective date. Provides that a cost benefit analysis must include certain information concerning the three year period covered by the analysis. Provides that in preparing a cost benefit analysis, the OMB shall consider any verified data provided voluntarily by interested parties, regulated persons, and nonprofit corporations
(Continued next page)

Effective: Upon passage; July 1, 2012.

Koch

(SENATE SPONSOR — HERSHMAN)

January 11, 2012, read first time and referred to Committee on Government and Regulatory Reform.

January 23, 2012, amended, reported — Do Pass.

January 27, 2012, read second time, amended, ordered engrossed.

January 30, 2012, engrossed. Read third time, passed. Yeas 69, nays 26.

SENATE ACTION

February 1, 2012, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

February 7, 2012, pursuant to Senate Rule 68(b), reassigned to Committee on Tax and Fiscal Policy.

February 23, 2012, amended, reported favorably — Do Pass.

February 27, 2012, read second time, amended, ordered engrossed.

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whose members may be affected by the rule. Provides that a cost benefit analysis is a public document, subject to the following: (1) The OMB or a state agency may not require an interested party or a regulated person to provide information in connection with an analysis. (2) If an interested party or a regulated person voluntarily provides information, the OMB or a state agency responsible for proposing or administering the rule shall ensure adequate protection of any confidential or proprietary information provided. (3) At least 30 days before presenting the cost benefit analysis to the governor and the committee, the OMB shall make the cost benefit analysis available to interested parties, regulated persons, and nonprofit corporations whose members may be affected by the rule. Specifies that to maintain confidentiality interested parties and regulated persons must submit the information according to the rulemaking agency's confidentiality rules. Requires the OMB to submit the cost benefit analysis to the administrative rules oversight committee. Requires an agency that amends or modifies a proposed rule to resubmit the proposed rule to the OMB. Provides certain exceptions to the analysis requirements for a proposed rule. Eliminates regular mail and personal service requirements for an initial notice of a determination for certain adjudicative proceedings. Requires a state agency, to the extent feasible and permitted by law, to afford the public a meaningful opportunity to comment through the Internet on proposed rules. Requires state agencies to consider providing a comment period that exceeds the minimum required by law. Require agencies to maintain a rulemaking docket and publish it on the agency's Internet web site. Provides that the state personnel department shall adopt classifications and qualifications for administrative law judges and other hearing officers in the executive department of state government and develop appropriate training programs for such administrative law judges and hearing officers. Requires each unit of local government that receives franchise fees paid to a unit from an entity providing video services to submit to the Indiana utility regulatory commission an annual report on the unit's receipt and use of those franchise fees during the calendar year for which the report is submitted. Consolidates six categories of pharmacy licenses into three categories.

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Reprinted
February 28, 2012

Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1280

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

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

- 1 SECTION 1. IC 4-3-22-1.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2012]: **Sec. 1.5. As used in this chapter, "continuous process
4 improvement" means a management methodology that combines
5 tools to improve process speed and reduce waste with data driven
6 project analysis to provide products and services with improved
7 quality at lower cost.**
- 8 SECTION 2. IC 4-3-22-6, AS ADDED BY P.L.246-2005,
9 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2012]: Sec. 6. (a) The division of government efficiency and
11 financial planning is established within the OMB. The director shall
12 appoint, subject to the approval of the governor, a director of the
13 division, who serves at the pleasure of the director of OMB.
- 14 (b) The division shall **do the following:**
- 15 (1) Conduct operational and procedural audits of state
16 government.
- 17 (2) Perform financial planning and design and implement

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1 efficiency projects. and

2 **(3) Advise and assist:**

3 **(A) each instrumentality, agency, authority, board,**
 4 **commission, and officer in the executive department of**
 5 **state government; and**

6 **(B) each body corporate and politic established as an**
 7 **instrumentality of the state;**

8 **to identify and implement continuous process improvement in**
 9 **state government.**

10 **(4) Carry out such other responsibilities as may be designated by**
 11 **the director.**

12 SECTION 3. IC 4-3-22-13, AS ADDED BY P.L.246-2005,
 13 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2012]: Sec. 13. (a) **Except as provided in subsection (e),** the
 15 OMB shall perform a cost benefit analysis upon each proposed rule and
 16 provide to:

17 (1) the governor; and

18 (2) the administrative rules oversight committee established under
 19 IC 2-5-18;

20 an assessment of the rule's effect on Indiana business. **The OMB shall**
 21 **submit the cost benefit analysis to the administrative rules**
 22 **oversight committee in an electronic format under IC 5-14-6.**

23 (b) After June 30, 2005, the cost benefit analysis performed by the
 24 OMB under this section with respect to any proposed rule that has an
 25 impact of at least five hundred thousand dollars (\$500,000) shall
 26 replace and be used for all purposes under IC 4-22-2 in lieu of the
 27 fiscal analysis previously performed by the legislative services agency
 28 under IC 4-22-2.

29 **(c) In preparing a cost benefit analysis under this section, the**
 30 **OMB shall consider in its analysis any verified data provided**
 31 **voluntarily by interested parties, regulated persons, and nonprofit**
 32 **corporations whose members may be affected by the proposed**
 33 **rule. A cost benefit analysis prepared under this section is a public**
 34 **document, subject to the following:**

35 **(1) This subsection does not empower the OMB or an agency**
 36 **to require an interested party or a regulated person to**
 37 **provide any materials, documents, or other information in**
 38 **connection with a cost benefit analysis under this section. If an**
 39 **interested party or a regulated person voluntarily provides**
 40 **materials, documents, or other information to the OMB or an**
 41 **agency in connection with a cost benefit analysis under this**
 42 **section, the OMB or the agency, as applicable, shall ensure the**

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adequate protection of any:
(A) information that is confidential under IC 5-14-3-4; or
(B) confidential and proprietary business plans and other confidential information.

If an agency has adopted rules to implement IC 5-14-3-4, interested parties and regulated persons must submit the information in accordance with the confidentiality rules adopted by the agency to ensure proper processing of confidentiality claims. The OMB and any agency involved in proposing the rule, or in administering the rule upon the rule's adoption, shall exercise all necessary caution to avoid disclosure of any confidential information supplied to the OMB or the agency by an interested party or a regulated person.

(2) The OMB shall make the cost benefit analysis and other related public documents available to interested parties, regulated persons, and nonprofit corporations whose members may be affected by the proposed rule at least thirty (30) days before presenting the cost benefit analysis to the governor and the administrative rules oversight committee under subsection (a).

(d) If the OMB or an agency is unable to obtain verified data for the cost benefit analysis described in subsection (c), the OMB shall state in the cost benefit analysis which data were unavailable for purposes of the cost benefit analysis.

(e) If the OMB finds that a proposed rule is:
(1) an adoption or incorporation by reference of a federal law, regulation, or rule that has no substantive effect on the scope or intended application of the federal law or rule; or
(2) a technical amendment with no substantive effect on an existing Indiana rule;

the OMB may not prepare a cost benefit analysis of the rule under this section. The agency shall submit the proposed rule to the OMB with a statement explaining how the proposed rule meets the requirements of this subsection. If the OMB finds that the rule meets the requirements of this subsection, the OMB shall provide its findings to the governor and to the committee in an electronic format under IC 5-14-6. If the agency amends or modifies the proposed rule after the OMB finds that a cost benefit may not be prepared for the rule, the agency shall resubmit the proposed rule to the OMB either for a new determination that the rule meets the requirements of this subsection, or for the OMB to prepare a cost benefit analysis of the rule under this section.

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1 SECTION 4. IC 4-3-22-13.1 IS ADDED TO THE INDIANA CODE
 2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 3 1, 2012]: **Sec. 13.1. (a) This section applies to a rule that:**

- 4 (1) has been adopted under IC 4-22-2 or IC 13-14-9; and
 5 (2) has taken effect;

6 after December 31, 2011.

7 (b) This section does not apply to a rule for which the OMB has
 8 not performed a cost benefit analysis under section 13(e) of this
 9 chapter.

10 (c) As used in this section, "committee" refers to the
 11 administrative rules oversight committee established by
 12 IC 2-5-18-4.

13 (d) For each rule to which this section applies, the OMB shall
 14 perform a cost benefit analysis of the rule with respect to the
 15 period encompassing the first three (3) years following the rule's
 16 effective date. Except as otherwise required by the governor or the
 17 committee under subsection (g), the OMB shall submit a cost
 18 benefit analysis prepared under this section to:

- 19 (1) the governor; and
 20 (2) the committee;

21 not later than six (6) months after the third anniversary of the
 22 rule's effective date. The OMB shall submit the cost benefit
 23 analysis to the committee in an electronic format under IC 5-14-6.

24 (e) A cost benefit analysis prepared under this section must
 25 include the following with respect to the three (3) year period
 26 covered by the analysis:

27 (1) The cost benefit analysis for the rule prepared under
 28 section 13 of this chapter before the rule's adoption, including
 29 the information required by Financial Management Circular
 30 #2010-4.

31 (2) A statement of the number of regulated persons, classified
 32 by industry sector, subject to the rule.

33 (3) A comparison of:

34 (A) the cost benefit analysis for the rule prepared under
 35 section 13 of this chapter before the rule's implementation;
 36 and

37 (B) the actual costs and benefits of the rule during the first
 38 three (3) years of the rule's implementation.

39 (4) For each element of the rule that is also the subject of
 40 restrictions or requirements imposed under federal law, a
 41 comparison of:

42 (A) the restrictions or requirements imposed under the

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rule; and
(B) the restrictions or requirements imposed under federal law.

(5) Any other information that the governor or the committee may require with respect to a cost benefit analysis under this section as requested in writing.

(f) In preparing a cost benefit analysis under this section, the OMB shall consider in its analysis any verified data provided voluntarily by interested parties, regulated persons, and nonprofit corporations whose members may be affected by the rule. A cost benefit analysis prepared under this section is a public document, subject to the following:

(1) This subsection does not empower the OMB or an agency to require an interested party or a regulated person to provide any materials, documents, or other information. If an interested party or a regulated person voluntarily provides materials, documents, or other information to the OMB or an agency in connection with a cost benefit analysis under this section, the OMB or the agency, as applicable, shall ensure the adequate protection of any:

- (A) information that is confidential under IC 5-14-3-4; or
- (B) confidential and proprietary business plans and other confidential information.

If an agency has adopted rules to implement IC 5-14-3-4, interested parties and regulated persons must submit the information in accordance with the confidentiality rules adopted by the agency to ensure proper processing of confidentiality claims. The OMB and any agency involved in administering the rule shall exercise all necessary caution to avoid disclosure of any confidential information supplied to the OMB or the agency by an interested party or a regulated person.

(2) The OMB shall make the cost benefit analysis and other related public documents available to interested parties, regulated persons, and nonprofit corporations whose members may be affected by the rule at least thirty (30) days before presenting the cost benefit analysis to the governor and the committee under subsection (d).

(g) If the OMB or an agency is unable to obtain verified data for the cost benefit analysis described in subsection (e), the OMB shall describe in the cost benefit analysis which data were unavailable for purposes of the cost benefit analysis.

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- 1 **(h) The governor or the committee, or both, may prescribe:**
- 2 **(1) the form of a cost benefit analysis; and**
- 3 **(2) the process, deadlines, and other requirements for**
- 4 **submitting a cost benefit analysis;**
- 5 **required under this section.**

6 SECTION 5. IC 4-21.5-2.7 IS ADDED TO THE INDIANA CODE
 7 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2012]:

9 **Chapter 2.7. Qualifications and Training of Administrative Law**
 10 **Judges and Other Hearing Officers**

- 11 **Sec. 1. The state personnel department shall:**
- 12 **(1) adopt classifications and qualifications for administrative**
- 13 **law judges and other hearing officers in the executive**
- 14 **department of state government; and**
- 15 **(2) develop appropriate training programs for administrative**
- 16 **law judges and other hearing officers in the executive**
- 17 **department of state government.**

18 **Sec. 2. The qualifications adopted under section 1 of this chapter**
 19 **are in addition to any other requirements specified by statute.**

20 **Sec. 3. The qualifications adopted under section 1 of this chapter**
 21 **do not apply to the ultimate authority for an agency or a member**
 22 **of the ultimate authority for an agency when the ultimate authority**
 23 **is a panel of individuals.**

24 SECTION 6. IC 4-21.5-3-1, AS AMENDED BY P.L.32-2011,
 25 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 UPON PASSAGE]: Sec. 1. (a) This section applies to:

- 27 (1) the giving of any notice;
- 28 (2) the service of any motion, ruling, order, or other filed item; or
- 29 (3) the filing of any document with the ultimate authority;
- 30 in an administrative proceeding under this article.

31 (b) Except as provided in subsection (c) or as otherwise provided by
 32 law, a person shall serve papers by:

- 33 (1) United States mail;
- 34 (2) personal service;
- 35 (3) electronic mail; or
- 36 (4) any other method approved by the Indiana Rules of Trial
 37 Procedure.

38 (c) The following shall be served by United States mail or personal
 39 service:

- 40 (1) The initial notice of a determination under section ~~4, 5, or~~ 6 of
 41 this chapter.
- 42 (2) A petition for review of an agency action under section 7 of

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1 this chapter.

2 (3) A complaint under section 8 of this chapter.

3 (d) The agency shall keep a record of the time, date, and
4 circumstances of the service under subsection (b) or (c).

5 (e) Service shall be made on a person or on the person's counsel or
6 other authorized representative of record in the proceeding. Service on
7 an artificial person or a person incompetent to receive service shall be
8 made on a person allowed to receive service under the rules governing
9 civil actions in the courts. If an ultimate authority consists of more than
10 one (1) individual, service on that ultimate authority must be made on
11 the chairperson or secretary of the ultimate authority. A document to
12 be filed with that ultimate authority must be filed with the chairperson
13 or secretary of the ultimate authority.

14 (f) If the current address of a person is not ascertainable, service
15 shall be mailed to the last known address where the person resides or
16 has a principal place of business. If the identity, address, or existence
17 of a person is not ascertainable, or a law other than a rule allows,
18 service shall be made by a single publication in a newspaper of general
19 circulation in:

20 (1) the county in which the person resides, has a principal place
21 of business, or has property that is the subject of the proceeding;

22 or

23 (2) Marion County, if the place described in subdivision (1) is not
24 ascertainable or the place described in subdivision (1) is outside
25 Indiana and the person does not have a resident agent or other
26 representative of record in Indiana.

27 (g) A notice given by publication must include a statement advising
28 a person how the person may receive written notice of the proceedings.

29 (h) The filing of a document with an ultimate authority is complete
30 on the earliest of the following dates that apply to the filing:

31 (1) The date on which the document is delivered to the ultimate
32 authority under subsection (b), (c), or (e).

33 (2) The date of the postmark on the envelope containing the
34 document, if the document is mailed to the ultimate authority by
35 United States mail.

36 (3) The date on which the document is deposited with a private
37 carrier, as shown by a receipt issued by the carrier, if the document is
38 sent to the ultimate authority by private carrier.

39 SECTION 7. IC 4-22-2-19.7 IS ADDED TO THE INDIANA CODE
40 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
41 1, 2012]: **Sec. 19.7. An agency, to the extent feasible and permitted
42 by law, shall afford the public a meaningful opportunity to**

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1 **comment through the Internet on proposed rules. An agency shall**
 2 **consider providing a comment period that exceeds the minimum**
 3 **required by law.**

4 SECTION 8. IC 4-22-2-22.5 IS ADDED TO THE INDIANA CODE
 5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 6 1, 2012]: **Sec. 22.5. (a) This section applies to a rule that an agency**
 7 **intends to adopt under sections 24 through 36 of this chapter.**

8 **(b) Each agency shall maintain a current rulemaking docket**
 9 **that is indexed.**

10 **(c) A current rulemaking docket must list each pending**
 11 **rulemaking proceeding. The docket must state or contain:**

- 12 **(1) the subject matter of the proposed rule;**
- 13 **(2) notices related to the proposed rule;**
- 14 **(3) how comments may be made;**
- 15 **(4) the time within which comments may be made;**
- 16 **(5) where comments may be inspected;**
- 17 **(6) requests for a public hearing;**
- 18 **(7) appropriate information about a public hearing, if any,**
 19 **including the names of the persons making the request;**
- 20 **(8) a description of relevant scientific and technical findings**
 21 **related to the proposed rule; and**
- 22 **(9) the timetable for action.**

23 **(d) The agency shall maintain the rulemaking docket on the**
 24 **agency's Internet web site. The information must be in an open**
 25 **format that can be easily searched and downloaded. Access to the**
 26 **docket shall, to the extent feasible and permitted by law, provide**
 27 **an opportunity for public comment on the pertinent parts of the**
 28 **rulemaking docket, including relevant scientific and technical**
 29 **findings. Upon request, the agency shall provide a written**
 30 **rulemaking docket.**

31 SECTION 9. IC 4-22-2-23, AS AMENDED BY P.L.215-2005,
 32 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2012]: **Sec. 23. (a) This section does not apply to rules**
 34 **adopted under IC 4-22-2-37.1.**

35 **(b) At least twenty-eight (28) days before an agency notifies the**
 36 **public of the agency's intention to adopt a rule under section 24 of this**
 37 **chapter, the agency shall notify the public of its intention to adopt a**
 38 **rule by publishing a notice of intent to adopt a rule in the Indiana**
 39 **Register. The publication notice must include an overview of the intent**
 40 **and scope of the proposed rule and the statutory authority for the rule.**

41 **(c) The requirement to publish a notice of intent to adopt a rule**
 42 **under subsection (b) does not apply to rulemaking under IC 13-14-9.**



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1 (d) In addition to the procedures required by this article, an agency
 2 may solicit comments from the public on the need for a rule, the
 3 drafting of a rule, or any other subject related to a rulemaking action,
 4 **including members of the public who are likely to be affected**
 5 **because they are the subject of the potential rulemaking or are**
 6 **likely to benefit from the potential rulemaking.** The procedures that
 7 the agency may use include the holding of conferences and the inviting
 8 of written suggestions, facts, arguments, or views.

9 (e) The agency shall prepare a written response that contains a
 10 summary of the comments received during any part of the rulemaking
 11 process. The written response is a public document. The agency shall
 12 make the written response available to interested parties upon request.

13 SECTION 10. IC 4-22-10 IS ADDED TO THE INDIANA CODE
 14 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2012]:

16 **Chapter 10. Document Drafting Standards**

17 **Sec. 1. As used in this chapter, "agency" has the meaning set**
 18 **forth in IC 4-22-2-3.**

19 **Sec. 2. As used in this chapter, "covered document" means any**
 20 **document that:**

- 21 (1) is necessary for obtaining any benefit or service
 22 administered or provided by an agency, or for filing taxes
 23 with an agency;
 24 (2) provides information about any state benefit or service; or
 25 (3) explains to the public how to comply with a requirement
 26 an agency administers or enforces.

27 **The term includes (whether in paper or electronic form) a letter,**
 28 **publication, form, notice, or instruction. The term does not include**
 29 **a rule subject to the format, numbering system, standards, and**
 30 **techniques established under IC 4-22-2-42.**

31 **Sec. 3. As used in this chapter, "plain writing" means writing**
 32 **that is clear, concise, and well-organized, and follows other best**
 33 **practices appropriate to the subject or field and intended audience.**

34 **Sec. 4. An agency shall use plain writing in every covered**
 35 **document that the agency issues or substantially revises.**

36 **Sec. 5. An agency must be fully in compliance with this chapter**
 37 **after September 30, 2013.**

38 SECTION 11. IC 8-1-34-24.5 IS ADDED TO THE INDIANA
 39 CODE AS A NEW SECTION TO READ AS FOLLOWS
 40 [EFFECTIVE UPON PASSAGE]: **Sec. 24.5. (a) This section applies**
 41 **to any unit that receives franchise fees paid to the unit under:**

- 42 (1) a certificate issued by the commission under this chapter;

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or

(2) an unexpired local franchise issued by the unit before July 1, 2006;

with respect to a particular calendar year.

(b) For each calendar year, beginning with the calendar year ending December 31, 2012, each unit to which this section applies shall submit to the commission, on a form or in the manner prescribed by the commission, a report that includes the following information for each certificate or local franchise in effect in the unit during the calendar year for which the report is submitted:

(1) The amount of franchise fees paid to the unit under the certificate or local franchise.

(2) The account of the local unit into which the franchise fees identified under subdivision (1) were deposited.

(3) The purposes for which any franchise fees received by the unit during:

(A) the calendar year for which the report is submitted; or

(B) a previous calendar year;

were used or spent by the unit during the calendar year for which the report is submitted.

(4) Any other information or data concerning the receipt and use of franchise fees that the commission considers appropriate.

(c) The commission shall prescribe the form of the report and the process, deadlines, and other requirements for submitting the report required under this section.

(d) Upon receiving the annual reports required under this section, the commission shall compile and organize the data and information contained in the reports. The commission shall include a summary of the data and information contained in the reports in the commission's annual report on the communications industry provided to the regulatory flexibility committee established by IC 8-1-2.6-4. However, this subsection does not empower the commission to disclose confidential and proprietary business plans and other confidential information without adequate protection of the information. The commission shall exercise all necessary caution to avoid disclosure of confidential information supplied under this section.

(e) The commission may adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to implement this section. An emergency rule adopted by the commission under IC 4-22-2-37.1 expires on the date a rule that supersedes the

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1 emergency rule is adopted by the commission under IC 4-22-2-24
2 through IC 4-22-2-36. However, any emergency rules adopted by
3 the commission under this subsection must take effect by a date
4 that enables a unit subject to this section to comply with this
5 section with respect to the calendar year ending December 31,
6 2012.

7 SECTION 12. IC 25-26-13-17, AS AMENDED BY P.L.98-2006,
8 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2012]: Sec. 17. (a) The board shall establish classes of
10 pharmacy permits as follows:

11 Type Category I. A retail permit for a pharmacy that provides
12 pharmaceutical care to the general public by the dispensing of a
13 drug or device.

14 Type Category II. An institutional permit for hospitals, clinics,
15 health care facilities, sanitariums, nursing homes, or dispensaries
16 that offer pharmaceutical care by dispensing a drug product to an
17 inpatient under a drug order or to an outpatient of the institution
18 under a prescription.

19 Type Category III. A permit for a pharmacy that is not:

- 20 (A) open to the general public; or
 - 21 (B) located in an institution listed under a Type H permit;
- 22 and provides pharmaceutical care to a patient who is located in an
23 institution or in the patient's home.

24 Type IV. A permit for a pharmacy not open to the general public
25 that provides pharmaceutical care by dispensing drugs and
26 devices to patients exclusively through the United States Postal
27 Services or other parcel delivery service.

28 Type V. A permit for a pharmacy that engages exclusively in the
29 preparation and dispensing of diagnostic or therapeutic
30 radioactive drugs.

31 Type VI. A permit for a pharmacy open to the general public that
32 provides pharmaceutical care by engaging in an activity under a
33 Type I or Type III permit. A pharmacy that obtains a Type VI
34 permit may provide services to:

- 35 (A) a home health care patient;
- 36 (B) a long term care facility; or
- 37 (C) a member of the general public that provides closed
38 door, central fill, mail order, or other processing
39 operations that are not open to the general public but
40 include:
- 41 (A) traditional pharmacy functions; or
- 42 (B) nontraditional pharmacy functions, such as infusion,

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nuclear pharmacy, or sterile compounding.
(b) The board may approve a remote or mobile location for Category I, II, or III permits. Pharmacy practice in a mobile or remote location may include, but is not limited to, telepharmacy, automated dispensing, or delivery of cognitive services.

~~(b)~~ **(c) Hospitals and hospital systems holding a Type Category II permit may offer drugs or devices to an employee, student, or medical staff member or their dependents for their own use.**

~~(c)~~ **(e) Nothing in this section prohibits a pharmacy holding a permit other than a Type IV permit from delivering drugs or devices through mail, parcel delivery, or hand delivery.**

~~(d)~~ **(d) Hospitals holding a Type Category II permit may operate remote locations within a reasonable distance of the licensed area, as determined by the board, after:**

- (1) filing an application on a form prepared by the board;**
- (2) having each location inspected by the board; and**
- (3) obtaining approval from the board.**

(e) Any applicable rule governing the practice of pharmacy in Indiana shall apply to all permits under this section.

(f) After June 30, 2012, a person with:

- (1) a Type I permit shall be treated as holding a Category I permit;**
- (2) a Type II permit shall be treated as holding a Category II permit; and**
- (3) a Type III, IV, V, or VI permit shall be treated as holding a Category III permit.**

The change in the name of the permit does not change the expiration date of the permit.

(g) After June 30, 2012, a reference in any rule or other document to:

- (1) a Type I permit shall be treated as a reference to a Category I permit;**
- (2) a Type II permit shall be treated as a reference to a Category II permit; or**
- (3) a Type III, IV, V, or VI permit shall be treated as a reference to a Category III permit.**

SECTION 13. IC 25-26-13-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 19. (a) A pharmacy holding a Type Category I or Type ~~VI~~ Category III permit may be open to the general public without a pharmacist on duty if the following conditions are met:

- (1) Approval is obtained from the board.**

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- 1 (2) All legend drugs and other merchandise that can only be
 2 dispensed by a pharmacist are securely locked or secured by an
 3 alternative system approved by the board when the pharmacist is
 4 absent.
- 5 (3) During the pharmacist's absence, a sign at least twenty (20)
 6 inches by thirty (30) inches is prominently displayed in the
 7 prescription department stating: "Prescription Department Closed,
 8 No Pharmacist on Duty".
- 9 (4) Only a pharmacist has access to the secured area.
- 10 (b) The board may revoke or limit a pharmacy's privilege under this
 11 section after a hearing under IC 4-21.5-3.
- 12 SECTION 14. IC 25-26-13-20, AS AMENDED BY P.L.98-2006,
 13 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2012]: Sec. 20. (a) A person desiring to open, establish,
 15 operate, or maintain a pharmacy shall apply to the board for a
 16 pharmacy permit on a form provided by the board. The applicant shall
 17 set forth:
- 18 (1) the name and occupation of the persons desiring the permit;
 19 (2) the location, including street address and city, of the
 20 pharmacy;
 21 (3) the name of the pharmacist who will qualify the pharmacy by
 22 being responsible to the board for the legal operation of the
 23 pharmacy under the permit; and
 24 (4) such other information as the board may require.
- 25 (b) If the applicant desires to open, establish, operate, or maintain
 26 more than one (1) pharmacy, **he the applicant** must file a separate
 27 application for each. Each pharmacy must be qualified by a different
 28 pharmacist.
- 29 (c) The board shall permit a pharmacist to serve as a qualifying
 30 pharmacist for more than one (1) pharmacy holding a **Type Category**
 31 **II** pharmacy permit upon the holder of the **Type Category** **II** permit
 32 showing circumstances establishing that:
- 33 (1) the permit holder has made a reasonable effort, without
 34 success, to obtain a qualifying pharmacist who is not serving as
 35 a qualifying pharmacist at another **Type Category** **II** pharmacy;
 36 and
 37 (2) the single pharmacist could effectively fulfill all duties and
 38 responsibilities of the qualifying pharmacist at both locations.
- 39 (d) The board shall grant or deny an application for a permit not
 40 later than one hundred twenty (120) days after the application and any
 41 additional information required by the board are submitted.
- 42 (e) The board may not issue a pharmacy permit to a person who

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1 desires to operate the pharmacy out of a residence.
 2 SECTION 15. IC 25-26-13-25, AS AMENDED BY P.L.174-2011,
 3 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 4 JULY 1, 2012]: Sec. 25. (a) All original prescriptions, whether in
 5 written or electronic format, shall be numbered and maintained in
 6 numerical and chronological order, or in a manner approved by the
 7 board and accessible for at least two (2) years in the pharmacy. A
 8 prescription transmitted from a practitioner by means of
 9 communication other than writing must immediately be reduced to
 10 writing or recorded in an electronic format by the pharmacist. The files
 11 shall be open for inspection to any member of the board or ~~its~~ **the**
 12 **board's** duly authorized agent or representative.
 13 (b) A prescription may be electronically transmitted from the
 14 practitioner by computer or another electronic device to a pharmacy
 15 that is licensed under this article or any other state or territory. An
 16 electronic data intermediary that is approved by the board:
 17 (1) may transmit the prescription information between the
 18 prescribing practitioner and the pharmacy;
 19 (2) may archive copies of the electronic information related to the
 20 transmissions as necessary for auditing and security purposes; and
 21 (3) must maintain patient privacy and confidentiality of all
 22 archived information as required by applicable state and federal
 23 laws.
 24 (c) Except as provided in subsection (d), a prescription for any drug,
 25 the label of which bears either the legend, "Caution: Federal law
 26 prohibits dispensing without prescription" or "Rx Only", may not be
 27 refilled without written, electronically transmitted, or oral authorization
 28 of a licensed practitioner.
 29 (d) A prescription for any drug, the label of which bears either the
 30 legend, "Caution: Federal law prohibits dispensing without
 31 prescription" or "Rx Only", may be refilled by a pharmacist one (1)
 32 time without the written, electronically transmitted, or oral
 33 authorization of a licensed practitioner if all of the following conditions
 34 are met:
 35 (1) The pharmacist has made every reasonable effort to contact
 36 the original prescribing practitioner or the practitioner's designee
 37 for consultation and authorization of the prescription refill.
 38 (2) The pharmacist believes that, under the circumstances, failure
 39 to provide a refill would be seriously detrimental to the patient's
 40 health.
 41 (3) The original prescription authorized a refill but a refill would
 42 otherwise be invalid for either of the following reasons:

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- 1 (A) All of the authorized refills have been dispensed.
 2 (B) The prescription has expired under subsection (g).
 3 (4) The prescription for which the patient requests the refill was:
 4 (A) originally filled at the pharmacy where the request for a
 5 refill is received and the prescription has not been transferred
 6 for refills to another pharmacy at any time; or
 7 (B) filled at or transferred to another location of the same
 8 pharmacy or its affiliate owned by the same parent corporation
 9 if the pharmacy filling the prescription has full access to
 10 prescription and patient profile information that is
 11 simultaneously and continuously updated on the parent
 12 corporation's information system.
 13 (5) The drug is prescribed for continuous and uninterrupted use
 14 and the pharmacist determines that the drug is being taken
 15 properly in accordance with IC 25-26-16.
 16 (6) The pharmacist shall document the following information
 17 regarding the refill:
 18 (A) The information required for any refill dispensed under
 19 subsection (e).
 20 (B) The dates and times that the pharmacist attempted to
 21 contact the prescribing practitioner or the practitioner's
 22 designee for consultation and authorization of the prescription
 23 refill.
 24 (C) The fact that the pharmacist dispensed the refill without
 25 the authorization of a licensed practitioner.
 26 (7) The pharmacist notifies the original prescribing practitioner
 27 of the refill and the reason for the refill by the practitioner's next
 28 business day after the refill has been made by the pharmacist.
 29 (8) Any pharmacist initiated refill under this subsection may not
 30 be for more than the minimum amount necessary to supply the
 31 patient through the prescribing practitioner's next business day.
 32 However, a pharmacist may dispense a drug in an amount greater
 33 than the minimum amount necessary to supply the patient through
 34 the prescribing practitioner's next business day if:
 35 (A) the drug is packaged in a form that requires the pharmacist
 36 to dispense the drug in a quantity greater than the minimum
 37 amount necessary to supply the patient through the prescribing
 38 practitioner's next business day; or
 39 (B) the pharmacist documents in the patient's record the
 40 amount of the drug dispensed and a compelling reason for
 41 dispensing the drug in a quantity greater than the minimum
 42 amount necessary to supply the patient through the prescribing

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- 1 practitioner's next business day.
- 2 (9) Not more than one (1) pharmacist initiated refill is dispensed
- 3 under this subsection for a single prescription.
- 4 (10) The drug prescribed is not a controlled substance.
- 5 A pharmacist may not refill a prescription under this subsection if the
- 6 practitioner has designated on the prescription form the words "No
- 7 Emergency Refill".
- 8 (e) When refilling a prescription, the refill record shall include:
- 9 (1) the date of the refill;
- 10 (2) the quantity dispensed if other than the original quantity; and
- 11 (3) the dispenser's identity on:
- 12 (A) the original prescription form; or
- 13 (B) another board approved, uniformly maintained, readily
- 14 retrievable record.
- 15 (f) The original prescription form or the other board approved
- 16 record described in subsection (e) must indicate by the number of the
- 17 original prescription the following information:
- 18 (1) The name and dosage form of the drug.
- 19 (2) The date of each refill.
- 20 (3) The quantity dispensed.
- 21 (4) The identity of the pharmacist who dispensed the refill.
- 22 (5) The total number of refills for that prescription.
- 23 (g) A prescription is valid for not more than one (1) year after the
- 24 original date of issue.
- 25 (h) A pharmacist may not knowingly dispense a prescription after
- 26 the demise of the practitioner, unless in the pharmacist's professional
- 27 judgment it is in the best interest of the patient's health.
- 28 (i) A pharmacist may not knowingly dispense a prescription after
- 29 the demise of the patient.
- 30 (j) A pharmacist or a pharmacy shall not resell, reuse, or redistribute
- 31 a medication that is returned to the pharmacy after being dispensed
- 32 unless the medication:
- 33 (1) was dispensed to an individual:
- 34 (A) residing in an institutional facility (as defined in 856
- 35 IAC 1-28.1-1(6));
- 36 (B) in a hospice program under IC 16-25; or
- 37 (C) in a county jail or department of correction facility;
- 38 (2) was properly stored and securely maintained according to
- 39 sound pharmacy practices;
- 40 (3) is returned unopened and:
- 41 (A) was dispensed in the manufacturer's original:
- 42 (i) bulk, multiple dose container with an unbroken tamper

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- 1 resistant seal; or
- 2 (ii) unit dose package; or
- 3 (B) was packaged by the dispensing pharmacy in a:
- 4 (i) multiple dose blister container; or
- 5 (ii) unit dose package;
- 6 (4) was dispensed by the same pharmacy as the pharmacy
- 7 accepting the return;
- 8 (5) is not expired; and
- 9 (6) is not a controlled substance (as defined in IC 35-48-1-9),
- 10 unless the pharmacy holds a ~~Type~~ **Category** II permit (as
- 11 described in section 17 of this chapter).
- 12 (k) A pharmacist or a pharmacy shall not resell, reuse, or
- 13 redistribute medical devices or medical supplies used for prescription
- 14 drug therapy that have been returned to the pharmacy after being
- 15 dispensed unless the medical devices or medical supplies:
- 16 (1) were dispensed to an individual in a county jail or department
- 17 of correction facility;
- 18 (2) are not expired; and
- 19 (3) are returned unopened and in the original sealed packaging.
- 20 (l) A pharmacist may use the pharmacist's professional judgment as
- 21 to whether to accept medication for return under this section.
- 22 (m) A pharmacist who violates subsection (d) commits a Class A
- 23 infraction.
- 24 SECTION 16. IC 35-48-7-8.1, AS AMENDED BY P.L.42-2011,
- 25 SECTION 76, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 26 JULY 1, 2012]: Sec. 8.1. (a) The board shall provide for a controlled
- 27 substance prescription monitoring program that includes the following
- 28 components:
- 29 (1) Each time a controlled substance designated by the board
- 30 under IC 35-48-2-5 through IC 35-48-2-10 is dispensed, the
- 31 dispenser shall transmit to the INSPECT program the following
- 32 information:
- 33 (A) The controlled substance recipient's name.
- 34 (B) The controlled substance recipient's or the recipient
- 35 representative's identification number or the identification
- 36 number or phrase designated by the INSPECT program.
- 37 (C) The controlled substance recipient's date of birth.
- 38 (D) The national drug code number of the controlled substance
- 39 dispensed.
- 40 (E) The date the controlled substance is dispensed.
- 41 (F) The quantity of the controlled substance dispensed.
- 42 (G) The number of days of supply dispensed.

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- 1 (H) The dispenser's United States Drug Enforcement Agency
2 registration number.
- 3 (I) The prescriber's United States Drug Enforcement Agency
4 registration number.
- 5 (J) An indication as to whether the prescription was
6 transmitted to the pharmacist orally or in writing.
- 7 (K) Other data required by the board.
- 8 (2) The information required to be transmitted under this section
9 must be transmitted not more than seven (7) days after the date on
10 which a controlled substance is dispensed.
- 11 (3) A dispenser shall transmit the information required under this
12 section by:
- 13 (A) uploading to the INSPECT web site;
14 (B) a computer diskette; or
15 (C) a CD-ROM disk;
16 that meets specifications prescribed by the board.
- 17 (4) The board may require that prescriptions for controlled
18 substances be written on a one (1) part form that cannot be
19 duplicated. However, the board may not apply such a requirement
20 to prescriptions filled at a pharmacy with a ~~Type~~ **Category II**
21 permit (as described in IC 25-26-13-17) and operated by a
22 hospital licensed under IC 16-21, or prescriptions ordered for and
23 dispensed to bona fide enrolled patients in facilities licensed
24 under IC 16-28. The board may not require multiple copy
25 prescription forms for any prescriptions written. The board may
26 not require different prescription forms for any individual drug or
27 group of drugs. Prescription forms required under this subdivision
28 must be approved by the Indiana board of pharmacy established
29 by IC 25-26-13-3.
- 30 (5) The costs of the program.
- 31 (b) This subsection applies only to a retail pharmacy. A pharmacist,
32 pharmacy technician, or person authorized by a pharmacist to dispense
33 a controlled substance may not dispense a controlled substance to a
34 person who is not personally known to the pharmacist, pharmacy
35 technician, or person authorized by a pharmacist to dispense a
36 controlled substance unless the person taking possession of the
37 controlled substance provides documented proof of the person's
38 identification to the pharmacist, pharmacy technician, or person
39 authorized by a pharmacist to dispense a controlled substance.
- 40 **SECTION 17. [EFFECTIVE UPON PASSAGE] (a) The state**
41 **personnel department shall before November 1, 2012, report in an**
42 **electronic format under IC 5-14-6 to the administrative rules**

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1 oversight commission concerning the:
2 (1) classifications and qualifications for administrative law
3 judges; and
4 (2) training programs for administrative law judges and other
5 hearing officers;
6 adopted and developed under IC 4-21.5-2.7, as added by this act.
7 (b) This SECTION expires January 1, 2013.
8 SECTION 18. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1280, 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 19, line 8, delete "do not include customer-facing activities" and insert "**are not open to the general public**".

Page 19, between lines 12 and 13, begin a new paragraph and insert:

"(b) The board may approve a remote or mobile location for Category I, II, or III permits. Pharmacy practice in a mobile or remote location may include, but is not limited to, telepharmacy, automated dispensing, or delivery of cognitive services."

Page 19, line 13, strike "(b)" and insert "(c)".

Page 19, line 13, after "Hospitals" insert "**and hospital systems**".

Page 19, line 16, strike "(c) Nothing in this section prohibits a pharmacy holding a".

Page 19, line 16, delete "Category".

Page 19, line 17, delete "I or Category II".

Page 19, line 17, strike "permit".

Page 19, line 17, strike "from delivering".

Page 19, strike line 18.

and when so amended that said bill do pass.

(Reference is to HB 1280 as introduced.)

MAHAN, Chair

Committee Vote: yeas 8, nays 3.

 HOUSE MOTION

Mr. Speaker: I move that House Bill 1280 be amended to read as follows:

Page 7, line 27, delete "2011." and insert "**2012.**".

Page 10, line 7, after "the" insert "**following:**

(1) The".

Page 10, between lines 9 and 10, begin a new line block indented and insert:

"(2) An individual who is hired by an agency as a full-time administrative law judge or other hearing officer before April 1, 2012, and is continuously employed by the agency as a

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full-time administrative law judge or other hearing officer after March 31, 2012."

Page 11, line 20, after "(b)" insert **"This subsection does not apply to an individual who is hired by an agency as a full-time administrative law judge before April 1, 2012, and is continuously employed by the agency as a full-time administrative law judge after March 31, 2012."**

Page 12, delete lines 14 through 34.
Renummer all SECTIONS consecutively.

(Reference is to HB 1280 as printed January 23, 2012.)

SMITH M

HOUSE MOTION

Mr. Speaker: I move that House Bill 1280 be amended to read as follows:

Page 7, line 27, delete "2011." and insert **"2012."**
Page 8, line 29, delete "investigation" and insert **"inspection"**.

(Reference is to HB 1280 as printed January 23, 2012.)

KOCH

HOUSE MOTION

Mr. Speaker: I move that House Bill 1280 be amended to read as follows:

Page 4, line 22, delete "(commonly".
Page 4, line 23, delete "referred to as lean six sigma)".
Page 4, line 24, after "speed" delete "," and insert **"and"**.
Page 4, line 24, delete "waste, and incorporate requirements" and insert **"waste"**.

Page 4, delete lines 27 through 42, begin a new paragraph and insert:

"SECTION 7. IC 4-3-22-6, AS ADDED BY P.L.246-2005, SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 6. (a) The division of government efficiency and financial planning is established within the OMB. The director shall appoint, subject to the approval of the governor, a director of the



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division, who serves at the pleasure of the director of OMB.

(b) The division shall ~~conduct operational and procedural audits of state government, perform financial planning, design and implement efficiency projects, and carry out such other responsibilities as may be designated by the director.~~ **advise and assist:**

(1) each instrumentality, agency, authority, board, commission, and officer in the executive department of state government; and

(2) each body corporate and politic established as an instrumentality of the state;

to identify and implement continuous process improvement in state government."

Page 5, delete lines 1 through 18.

Re-number all SECTIONS consecutively.

(Reference is to HB 1280 as printed January 23, 2012.)

KOCH

HOUSE MOTION

Mr. Speaker: I move that House Bill 1280 be amended to read as follows:

Page 11, between lines 3 and 4, begin a new paragraph and insert:

"SECTION 15. IC 4-21.5-3-1, AS AMENDED BY P.L.32-2011, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) This section applies to:

- (1) the giving of any notice;
- (2) the service of any motion, ruling, order, or other filed item; or
- (3) the filing of any document with the ultimate authority;

in an administrative proceeding under this article.

(b) Except as provided in subsection (c) or as otherwise provided by law, a person shall serve papers by:

- (1) United States mail;
- (2) personal service;
- (3) electronic mail; or
- (4) any other method approved by the Indiana Rules of Trial Procedure.

(c) The following shall be served by United States mail or personal service:

- (1) The initial notice of a determination under section ~~4, 5, or 6~~ of

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this chapter.

(2) A petition for review of an agency action under section 7 of this chapter.

(3) A complaint under section 8 of this chapter.

(d) The agency shall keep a record of the time, date, and circumstances of the service under subsection (b) or (c).

(e) Service shall be made on a person or on the person's counsel or other authorized representative of record in the proceeding. Service on an artificial person or a person incompetent to receive service shall be made on a person allowed to receive service under the rules governing civil actions in the courts. If an ultimate authority consists of more than one (1) individual, service on that ultimate authority must be made on the chairperson or secretary of the ultimate authority. A document to be filed with that ultimate authority must be filed with the chairperson or secretary of the ultimate authority.

(f) If the current address of a person is not ascertainable, service shall be mailed to the last known address where the person resides or has a principal place of business. If the identity, address, or existence of a person is not ascertainable, or a law other than a rule allows, service shall be made by a single publication in a newspaper of general circulation in:

(1) the county in which the person resides, has a principal place of business, or has property that is the subject of the proceeding; or

(2) Marion County, if the place described in subdivision (1) is not ascertainable or the place described in subdivision (1) is outside Indiana and the person does not have a resident agent or other representative of record in Indiana.

(g) A notice given by publication must include a statement advising a person how the person may receive written notice of the proceedings.

(h) The filing of a document with an ultimate authority is complete on the earliest of the following dates that apply to the filing:

(1) The date on which the document is delivered to the ultimate authority under subsection (b), (c), or (e).

(2) The date of the postmark on the envelope containing the document, if the document is mailed to the ultimate authority by United States mail.

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(3) The date on which the document is deposited with a private carrier, as shown by a receipt issued by the carrier, if the document is sent to the ultimate authority by private carrier.".
Renumber all SECTIONS consecutively.

(Reference is to HB 1280 as printed January 23, 2012.)

KOCH

HOUSE MOTION

Mr. Speaker: I move that House Bill 1280 be amended to read as follows:

Page 24, delete lines 34 through 42.
Page 25, delete lines 1 through 28.
Renumber all SECTIONS consecutively.

(Reference is to HB 1280 as printed January 23, 2012.)

COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred House Bill No. 1280, 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, delete lines 1 through 17.
Delete pages 2 through 3.
Page 4, delete lines 1 through 18.

Page 4, delete lines 26 through 42, begin a new paragraph and insert:

"SECTION 2. IC 4-3-22-6, AS ADDED BY P.L.246-2005, SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 6. (a) The division of government efficiency and financial planning is established within the OMB. The director shall appoint, subject to the approval of the governor, a director of the division, who serves at the pleasure of the director of OMB.

(b) The division shall **do the following**:

- (1) Conduct operational and procedural audits of state government.
- (2) Perform financial planning and design and implement



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efficiency projects. and

(3) Advise and assist:

(A) each instrumentality, agency, authority, board, commission, and officer in the executive department of state government; and

(B) each body corporate and politic established as an instrumentality of the state;

to identify and implement continuous process improvement in state government.

(4) Carry out such other responsibilities as may be designated by the director.

SECTION 3. IC 4-3-22-13, AS ADDED BY P.L.246-2005, SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 13. (a) The OMB shall perform a cost benefit analysis upon each proposed rule and provide to:

(1) the governor; and

(2) the administrative rules oversight committee established under IC 2-5-18;

an assessment of the rule's effect on Indiana business.

(b) After June 30, 2005, the cost benefit analysis performed by the OMB under this section with respect to any proposed rule that has an impact of at least five hundred thousand dollars (\$500,000) shall replace and be used for all purposes under IC 4-22-2 in lieu of the fiscal analysis previously performed by the legislative services agency under IC 4-22-2.

(c) In preparing a cost benefit analysis under this section, the OMB shall consider in its analysis any verified data provided voluntarily by interested parties, regulated persons, and nonprofit corporations whose members may be affected by the proposed rule. A cost benefit analysis prepared under this section is a public document, subject to the following:

(1) This subsection does not empower the OMB or an agency to require an interested party or a regulated person to provide any materials, documents, or other information in connection with a cost benefit analysis under this section. If an interested party or a regulated person voluntarily provides materials, documents, or other information to the OMB or an agency in connection with a cost benefit analysis under this section, the OMB or the agency, as applicable, shall ensure the adequate protection of any:

(A) information that is confidential under IC 5-14-3-4; or

(B) confidential and proprietary business plans and other

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confidential information.

The OMB and any agency involved in proposing the rule, or in administering the rule upon the rule's adoption, shall exercise all necessary caution to avoid disclosure of any confidential information supplied to the OMB or the agency by an interested party or a regulated person.

(2) The OMB shall make the cost benefit analysis and other related public documents available to interested parties, regulated persons, and nonprofit corporations whose members may be affected by the proposed rule at least thirty (30) days before presenting the cost benefit analysis to the governor and the administrative rules oversight committee under subsection (a).

SECTION 4. IC 4-3-22-13.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 13.1. (a) This section applies to a rule that:

- (1) has been adopted under IC 4-22-2 or IC 13-14-9; and
- (2) has taken effect;

after December 31, 2011.

(b) As used in this section, "committee" refers to the administrative rules oversight committee established by IC 2-5-18-4.

(c) For each rule to which this section applies, the OMB shall perform a cost benefit analysis of the rule with respect to the period encompassing the first three (3) years following the rule's effective date. Except as otherwise required by the governor or the committee under subsection (f), the OMB shall submit a cost benefit analysis prepared under this section to:

- (1) the governor; and
- (2) the committee;

not later than six (6) months after the third anniversary of the rule's effective date.

(d) A cost benefit analysis prepared under this section must include the following with respect to the three (3) year period covered by the analysis:

- (1) The cost benefit analysis for the rule prepared under section 13 of this chapter before the rule's adoption, including the information required by Financial Management Circular #2010-4.
- (2) A statement of the number of regulated persons, classified by industry sector, subject to the rule.
- (3) A comparison of:

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- (A) the cost benefit analysis for the rule prepared under section 13 of this chapter before the rule's implementation; and
- (B) the actual costs and benefits of the rule during the first three (3) years of the rule's implementation.
- (4) For each element of the rule that is also the subject of restrictions or requirements imposed under federal law, a comparison of:
- (A) the restrictions or requirements imposed under the rule; and
- (B) the restrictions or requirements imposed under federal law.
- (5) Any other information that the governor or the committee may require with respect to a cost benefit analysis under this section.
- (e) In preparing a cost benefit analysis under this section, the OMB shall consider in its analysis any verified data provided voluntarily by interested parties, regulated persons, and nonprofit corporations whose members may be affected by the rule. A cost benefit analysis prepared under this section is a public document, subject to the following:
- (1) This subsection does not empower the OMB or an agency to require an interested party or a regulated person to provide any materials, documents, or other information. If an interested party or a regulated person voluntarily provides materials, documents, or other information to the OMB or an agency in connection with a cost benefit analysis under this section, the OMB or the agency, as applicable, shall ensure the adequate protection of any:
- (A) information that is confidential under IC 5-14-3-4; or
- (B) confidential and proprietary business plans and other confidential information.
- The OMB and any agency involved in administering the rule shall exercise all necessary caution to avoid disclosure of any confidential information supplied to the OMB or the agency by an interested party or a regulated person.
- (2) The OMB shall make the cost benefit analysis and other related public documents available to interested parties, regulated persons, and nonprofit corporations whose members may be affected by the rule at least thirty (30) days before presenting the cost benefit analysis to the governor and the committee under subsection (c).

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- (f) The governor or the committee, or both, may prescribe:
 - (1) the form of a cost benefit analysis; and
 - (2) the process, deadlines, and other requirements for submitting a cost benefit analysis;

required under this section.

SECTION 5. IC 4-21.5-2.7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

Chapter 2.7. Qualifications and Training of Administrative Law Judges and Other Hearing Officers

Sec. 1. The state personnel department shall:

- (1) adopt classifications and qualifications for administrative law judges and other hearing officers in the executive department of state government; and
- (2) develop appropriate training programs for administrative law judges and other hearing officers in the executive department of state government.

Sec. 2. The qualifications adopted under section 1 of this chapter are in addition to any other requirements specified by statute.

Sec. 3. The qualifications adopted under section 1 of this chapter do not apply to the ultimate authority for an agency or a member of the ultimate authority for an agency when the ultimate authority is a panel of individuals.

SECTION 6. IC 4-22-2-19.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 19.7. An agency, to the extent feasible and permitted by law, shall afford the public a meaningful opportunity to comment through the Internet on proposed rules. An agency shall consider providing a comment period that exceeds the minimum required by law."**

Delete pages 5 through 14.

Page 15, delete lines 1 through 8.

Page 16, line 8, reset in roman "may".

Page 16, line 8, delete "shall".

Page 16, delete lines 40 through 42.

Page 17, delete lines 1 through 22.

Page 17, line 23, delete "6. (a) An agency must be fully in compliance with this" and insert "4."

Page 17, delete line 24.

Page 17, line 25, delete "(b)".

Page 17, run in lines 23 through 25.

Page 17, line 27, delete "7. (a)" and insert "5."

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Page 17, line 28, delete "section" and insert "**chapter**".

Page 17, delete lines 29 through 34.

Page 26, between lines 36 and 37, begin a new paragraph and insert:

"SECTION 18. [EFFECTIVE UPON PASSAGE] **(a) The state personnel department shall before November 1, 2012, report in an electronic format under IC 5-14-6 to the administrative rules oversight commission concerning the:**

(1) classifications and qualifications for administrative law judges; and

(2) training programs for administrative law judges and other hearing officers; adopted and developed under IC 4-21.5-2.7, as added by this act.

(b) This SECTION expires January 1, 2013."

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1280 as reprinted January 28, 2012.)

HERSHMAN, Chairperson

Committee Vote: Yeas 9, Nays 3.

Report of the President
Pro Tempore

Madam President: Pursuant to Senate Rule 68(b), I hereby report that Engrossed House Bill 1280, currently assigned to the Committee on Corrections, Criminal, and Civil Matters, be reassigned to the Committee on Tax and Fiscal Policy.

LONG

SENATE MOTION

Madam President: I move that Engrossed House Bill 1280 be amended to read as follows:

Page 2, line 14, delete "The" and insert "**Except as provided in subsection (e), the**".

Page 2, line 19, after "business." insert "**The OMB shall submit the cost benefit analysis to the administrative rules oversight**

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committee in an electronic format under IC 5-14-6."

Page 3, line 2, before "The" insert "If an agency has adopted rules to implement IC 5-14-3-4, interested parties and regulated persons must submit the information in accordance with the confidentiality rules adopted by the agency to ensure proper processing of confidentiality claims."

Page 3, between lines 13 and 14, begin a new paragraph and insert:
"(d) If the OMB or an agency is unable to obtain verified data for the cost benefit analysis described in subsection (c), the OMB shall state in the cost benefit analysis which data were unavailable for purposes of the cost benefit analysis.

(e) If the OMB finds that a proposed rule is:

- (1) an adoption or incorporation by reference of a federal law, regulation, or rule that has no substantive effect on the scope or intended application of the federal law or rule; or**
- (2) a technical amendment with no substantive effect on an existing Indiana rule;**

the OMB may not prepare a cost benefit analysis of the rule under this section. The agency shall submit the proposed rule to the OMB with a statement explaining how the proposed rule meets the requirements of this subsection. If the OMB finds that the rule meets the requirements of this subsection, the OMB shall provide its findings to the governor and to the committee in an electronic format under IC 5-14-6. If the agency amends or modifies the proposed rule after the OMB finds that a cost benefit may not be prepared for the rule, the agency shall resubmit the proposed rule to the OMB either for a new determination that the rule meets the requirements of this subsection, or for the OMB to prepare a cost benefit analysis of the rule under this section."

Page 3, between lines 19 and 20, begin a new paragraph and insert:

"(b) This section does not apply to a rule for which the OMB has not performed a cost benefit analysis under section 13(e) of this chapter."

Page 3, line 20, delete "(b)" and insert "(c)".

Page 3, line 23, delete "(c)" and insert "(d)".

Page 3, line 27, delete "(f)," and insert "(g)".

Page 3, line 32, after "date." insert **"The OMB shall submit the cost benefit analysis to the committee in an electronic format under IC 5-14-6."**

Page 3, line 33, delete "(d)" and insert "(e)".

Page 4, line 15, after "section" insert **"as requested in writing"**.

Page 4, line 16, delete "(e)" and insert "(f)".

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Page 4, line 33, before "The" insert **"If an agency has adopted rules to implement IC 5-14-3-4, interested parties and regulated persons must submit the information in accordance with the confidentiality rules adopted by the agency to ensure proper processing of confidentiality claims."**

Page 4, line 42, delete "(c)." and insert "(d)".

Page 4, after line 42, begin a new paragraph and insert:

"(g) If the OMB or an agency is unable to obtain verified data for the cost benefit analysis described in subsection (e), the OMB shall describe in the cost benefit analysis which data were unavailable for purposes of the cost benefit analysis."

Page 5, line 1, delete "(f)" and insert "(h)".

Page 5, between lines 23 and 24, begin a new paragraph and insert:

"SECTION 6. IC 4-21.5-3-1, AS AMENDED BY P.L.32-2011, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) This section applies to:

- (1) the giving of any notice;
- (2) the service of any motion, ruling, order, or other filed item; or
- (3) the filing of any document with the ultimate authority;

in an administrative proceeding under this article.

(b) Except as provided in subsection (c) or as otherwise provided by law, a person shall serve papers by:

- (1) United States mail;
- (2) personal service;
- (3) electronic mail; or
- (4) any other method approved by the Indiana Rules of Trial Procedure.

(c) The following shall be served by United States mail or personal service:

- (1) The initial notice of a determination under section ~~4, 5, or~~ 6 of this chapter.
- (2) A petition for review of an agency action under section 7 of this chapter.
- (3) A complaint under section 8 of this chapter.

(d) The agency shall keep a record of the time, date, and circumstances of the service under subsection (b) or (c).

(e) Service shall be made on a person or on the person's counsel or other authorized representative of record in the proceeding. Service on an artificial person or a person incompetent to receive service shall be made on a person allowed to receive service under the rules governing civil actions in the courts. If an ultimate authority consists of more than one (1) individual, service on that ultimate authority must be made on

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the chairperson or secretary of the ultimate authority. A document to be filed with that ultimate authority must be filed with the chairperson or secretary of the ultimate authority.

(f) If the current address of a person is not ascertainable, service shall be mailed to the last known address where the person resides or has a principal place of business. If the identity, address, or existence of a person is not ascertainable, or a law other than a rule allows, service shall be made by a single publication in a newspaper of general circulation in:

(1) the county in which the person resides, has a principal place of business, or has property that is the subject of the proceeding; or

(2) Marion County, if the place described in subdivision (1) is not ascertainable or the place described in subdivision (1) is outside Indiana and the person does not have a resident agent or other representative of record in Indiana.

(g) A notice given by publication must include a statement advising a person how the person may receive written notice of the proceedings.

(h) The filing of a document with an ultimate authority is complete on the earliest of the following dates that apply to the filing:

(1) The date on which the document is delivered to the ultimate authority under subsection (b), (c), or (e).

(2) The date of the postmark on the envelope containing the document, if the document is mailed to the ultimate authority by United States mail.

(3) The date on which the document is deposited with a private carrier, as shown by a receipt issued by the carrier, if the document is sent to the ultimate authority by private carrier."

Renumber all SECTIONS consecutively.

(Reference is to EHB 1280 as printed February 24, 2012.)

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