

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

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

FISCAL IMPACT STATEMENT

LS 6631

BILL NUMBER: HB 1280

NOTE PREPARED: Jan 30, 2012

BILL AMENDED: Jan 27, 2012

SUBJECT: Regulatory Matters.

FIRST AUTHOR: Rep. Koch

FIRST SPONSOR: Sen. Hershman

BILL STATUS: As Passed House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

Regulation of Intrastate Commerce: It provides that intrastate commerce in Indiana is not subject to the authority of the United States Congress.

Administrative Rules Retrospective Review: The bill provides for a retrospective review of agency rules.

Opportunity to Correct: The bill imposes a duty on a state agency under certain circumstances to give a person an opportunity to correct an alleged violation of law that is discovered in an inspection.

Hearing Officers and Administrative Law Judges: The bill requires hearing officers and administrative law judges to be attorneys licensed to practice law in Indiana.

Continuous Process Improvement: The bill requires state agencies and instrumentalities to implement continuous process improvement techniques.

Rulemaking: It requires agencies to evaluate the benefits and costs of rules, seek alternatives to regulation, establish and publish a rulemaking docket, and encourage public participation in rulemaking proceedings.

Document Drafting: The bill requires that state documents provided to the public must be written in plain English.

Video Services Franchise Fees: The bill requires each unit of local government that receives franchise fees paid to a unit from an entity providing video services to submit to the IURC an annual report on the unit's receipt and use of those franchise fees during the calendar year for which the report is submitted.

Pharmacy License Category: It consolidates six categories of pharmacy licenses into three categories.

Effective Date: Upon passage; July 1, 2012.

Explanation of State Expenditures: *Administrative Rules Retrospective Review:* The bill requires state agencies to develop and carry out a scheduled review of administrative rules to determine the extent to which rules are outmoded, ineffective, insufficient, or excessively burdensome. Also, the Administrative Rules Committee (ARC) may, in writing, direct an agency to undertake a retrospective review of one or more rules. This retrospective review could increase costs for an agency similar to the initial adoption of the rule.

Adopting Administrative Rules: The bill adds to the considerations for adopting rules, including taking into account, to the extent feasible, the costs of cumulative rules of the same and other agencies, specifying performance objectives, and basing the decision to add a rule on a reasoned determination that the rule's benefits justify the rule's costs. The agency, to the extent permitted by law, is to identify and assess alternatives to adopting the rules, such as economic incentives or providing information for the public to make choices. The bill requires, to the extent feasible and consistent with law, that the rules be based on open exchange of information and that the agency afford the public an opportunity to comment on the rules through the Internet. Further, the bill requires each agency to maintain an indexed rulemaking docket on the agencies website.

(Revised) Notice of a Determination: Under the bill, initial determination notices for licenses issued by various state agencies; grant of property or service, bonds, financial guarantees, tax incentives, variances or exemptions from laws; tax due or other liabilities; and determination of status could be served by electronic methods, other methods approved by the Indiana Rules of Trial Procedure, or by United States mail or personal service (as required under current law). To the extent that state agencies utilize electronic methods for the serving of papers, the bill potentially reduces notification costs for certain types of initial determinations. The cost savings will depend on whether a less expensive alternate method is used.

(Revised) Continuous Process Improvement: The bill will have indeterminate fiscal impact on the budget of the Office of Management and Budget (OMB). Under current law, among the duties of the Division of Governmental Efficiency and Financial Planning (GEFP) is conducting operational and procedural audits of state government and designing and implementing efficiency projects. The bill requires the GEFP to advise and assist each instrumentality, agency, authority, board, commission, officers of the executive, and body corporate and politic to identify and implement continuous process improvement. [In FY 2012 and FY 2013, the total OMB appropriation is \$980,324 each year.]

(Revised) Hearing Officers and Administrative Law Judges: The bill could potentially increase costs to pay attorneys to act as hearing officers and administrative law judges. However, most administrative law judge positions are already filled by an attorney, resulting in no cost increases. Additionally, the requirements would not apply to an individual who is continuously employed as a full-time administrative law judge or other hearing officer before April 1, 2012.

Opportunity to Correct: This bill requires all state agencies in the executive department to notify alleged violators about possible violations discovered in inspections and provide an opportunity for the individuals to

correct the violations under certain circumstances. Agencies are required to determine if the violation has been corrected within 30 days of the notification, or the agreed time for correction, whichever is earlier. If the alleged violator does not enter into an agreement with the agency or does not correct a violation within the time allowed, then the agency may take any enforcement action authorized by law.

Video Services Franchise Fees: The IURC may have a minimal one-time cost increase to adopt rules to implement the reporting requirement under the bill and ongoing costs to produce an annual report.

Pharmacy License Category: To the extent that the bill will align permits with actual business practices, the Professional Licensing Agency (PLA) may experience some minimal cost savings. Issuing new permits in the new categories is expected to have minimal cost as the PLA already has a policy for permit holders to download and print permits once or pay for printings by the PLA.

Background - Administrative Rules Retrospective Review: On the schedule developed by the agency and submitted to the OMB, an agency is to perform a retrospective review of its rules to look for changes in the relevance, clarity, and reasonableness of the rules. The agency would have to publish its supporting data on the agency's website. If the agency is directed to retroactively review rules by the ARC, there are additional criteria for review of the rule. The agency is to report back to the ARC within one year and make a presentation at a public meeting.

Pharmacy License Category: Under current law, there are six types of pharmacy permits. Under the bill, there are to be three categories, with Types I and II corresponding to Categories I and II respectively, and Types III, IV, V, and VI rolling into Category III. Existing permits move to the newly established category, but the expiration date of the permit does not change. Current Type III, IV, and V permit holders would gain the ability to open to the general public without a pharmacist on duty under certain conditions. In addition, the Pharmacy Board may approve a remote or mobile location for Category I, II, or III permits to include telepharmacy, automated dispensing, or delivery of cognitive services.

Explanation of State Revenues: *Regulation of Intrastate Commerce:* The extent to which goods and services that are grown, manufactured, or made in Indiana and are sold, maintained, and retained in Indiana may have components that come from other regional areas is not known, nor is the impact of these components on the determination that a good or service is "Indiana made". There are no data to determine (1) whether a state determination that a good or service is not subject to regulation under Congress' constitutional power to regulate commerce among the several states might be in conflict with federal regulations and (2) the nature and extent of potential federal sanctions which might be imposed.

Opportunity to Correct: This bill could reduce the amount of civil penalties imposed by state agencies. Any reduction in civil penalties would depend upon whether civil penalties would have been imposed on violators absent the bill's provision to allow opportunities to correct violations. This impact is indeterminable.

Explanation of Local Expenditures:

Explanation of Local Revenues: *Video Services Franchise Fees:* The bill requires a local unit that receives a franchise fee to report to the IURC, including the amount of the fees, the account into which the fees were deposited, the purposes for which any fees were received, and any other information the IURC considers appropriate.

State Agencies Affected: State agencies, Administrative Rules Commission, PLA, IURC, OMB.

Local Agencies Affected: Trial courts, city and town courts.

Information Sources: www.in.gov/pla.

Fiscal Analyst: Karen Firestone, 317-234-2106, Chris Baker, 317-232-9851.