

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.

SENATE ENROLLED ACT No. 311

AN ACT to amend the Indiana Code concerning state offices and administration.

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

SECTION 1. 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) **Except as provided in subsection (e)**, 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. **The OMB shall submit the cost benefit analysis to the committee in an electronic format under IC 5-14-6.**

(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**



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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 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



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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 analysis 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.

SECTION 2. 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) 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.

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

(d) 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 (h), 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. The OMB shall submit the cost benefit analysis to the committee in an electronic format under IC 5-14-6.

(e) 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 following:

- (A) The information required by Financial Management Circular #2010-4.
- (B) The estimate of the primary and direct benefits of the



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rule, including the impact on:

- (i) consumer protection;
- (ii) worker safety;
- (iii) the environment; and
- (iv) business competitiveness;

as determined before the rule's adoption.

(C) The estimate of the secondary or indirect benefits of the rule and the explanation of how the conduct regulated by the rule is linked to the primary and secondary benefits, as determined before the rule's adoption.

(D) The estimate of any cost savings to regulated persons (including individuals and businesses) as a result of the rule, including any savings from:

- (i) a change in an existing requirement; or
- (ii) the imposition of a new requirement;

as determined before the rule's adoption.

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

(3) A comparison of:

(A) the cost benefit analysis for the rule prepared under section 13 of this chapter before the rule's implementation, including the information specified in subdivision (1); and
(B) the actual costs and benefits of the rule during the first three (3) years of the rule's implementation, including the following:

- (i) Any actual primary and direct benefits of the rule, including the rule's impact on consumer protection, worker safety, the environment, and business competitiveness.
- (ii) Any actual secondary or indirect benefits of the rule and an explanation of how the conduct regulated by the rule is linked to the primary and secondary benefits.
- (iii) Any actual cost savings to regulated persons (including individuals and businesses) as a result of the rule, including any savings from a change in an existing requirement or from the imposition of a new requirement.

(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:

(A) requires with respect to a cost benefit analysis under this section; and

(B) requests 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 state in the cost benefit analysis which data were unavailable for



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purposes of the cost benefit analysis.

(h) 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.

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FISCAL IMPACT STATEMENT

LS 6877

BILL NUMBER: SB 311

NOTE PREPARED: Mar 14, 2012

BILL AMENDED: Feb 23, 2012

SUBJECT: Cost-Benefit Analysis for Administrative Rules.

FIRST AUTHOR: Sen. Hershman

FIRST SPONSOR: Rep. Truitt

BILL STATUS: Enrolled

FUNDS AFFECTED: ☒ **GENERAL**
DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: With certain exceptions, this bill requires the Office of Management and Budget (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. It provides that 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 proposed rule or with respect to the first three years following the rule's effective date. The bill also requires the OMB to submit its findings that the OMB may not prepare a cost-benefit analysis on the rule to the Administrative Rules Oversight Committee and the Governor.

The bill requires the OMB to submit a cost-benefit analysis to the Governor and the Administrative Rules Oversight Committee not later than six months after the third anniversary of the rule's effective date. It provides that a cost-benefit analysis prepared before or after a rule's adoption and effective date must include certain information, including information concerning: (1) the rule's primary and direct benefits; (2) the rule's secondary and indirect benefits; and (3) any cost savings to regulated persons as a result of the rule. It provides that a cost-benefit analysis may contain additional information that the Governor or the committee requests in writing. It provides that the Governor or the committee may prescribe: (1) the form of a cost-benefit analysis; and (2) the process, deadlines, and other requirements for submitting a cost-benefit analysis. The bill also provides that in preparing a cost-benefit analysis: (1) before a rule's adoption under the existing statute that requires a cost-benefit analysis for proposed rules; or (2) after a rule's adoption and effective date under the act; the OMB shall consider any verified data provided voluntarily by interested parties, regulated persons, and nonprofit corporations whose members may be affected by the rule.

The bill provides that if the OMB or an agency is unable to obtain verified data for a cost-benefit analysis, the OMB shall state in the analysis which data were unavailable. It provides that a cost-benefit analysis prepared before or after a rule's adoption is a public document, subject to the following: (1) The OMB or an 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 an 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. The bill also provides that if an agency has adopted rules regarding the confidentiality of information, 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.

Effective Date: July 1, 2012.

Explanation of State Expenditures: The bill's requirements will likely increase administrative expenses for the OMB, but any impact will depend upon the extent that cost-benefit analyses will need to be prepared due to the bill's provisions. It is estimated that the bill's requirements can be accomplished within existing resources.

Executive Order 2-89 and Financial Management Circular (FMC) 2010-4 require state agencies to complete fiscal analyses of proposed rules' impact on state and local government. The OMB does not conduct their own fiscal analysis unless an agency's analysis is incomplete.

Explanation of State Revenues:

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Office of Management and Budget.

Local Agencies Affected:

Information Sources: Ann Kaiser, Office of Management and Budget, 317-234-2079.

Fiscal Analyst: Jessica Harmon, 317-232-9854.