



MEMORANDUM

TO: Indiana State Board of Education
FROM: Kirstie Andersen, Staff Attorney
DATE: July 31, 2013
RE: General rulemaking

The legislature enacted several bills during the last session in which it charged the **SBOE** with adopting rules in order to implement those laws.¹ Indiana Code prescribes very specific actions and deadlines for the adoption of rules. See Chapter 2 of Title 4 of the Indiana Code. Specifically, the rulemaking process shall begin “not later than sixty (60) days after the effective date of the statute that authorizes the rule[.]” IC 4-22-2-19(c)(1). The effective date of the statutes on the August agenda is July 1, 2013. Thus, the rulemaking must be initiated on or before August 30, 2013.

Before rulemaking begins, however, the **SBOE** must approve the initiation of the rulemaking. The department is presenting the rules for which rulemaking must begin during this month’s meeting in order to meet the August 30 deadline.

¹ The rules of the SBOE are codified in Title 511 of the Indiana Administrative Code (also referred to as “IAC”). Each article of the IAC codifies a specific category of rules. For example, rules regarding achievement tests are found within Article 5 of Title 511. The full text of the rules may be found in the Indiana Administrative Code, http://www.in.gov/legislative/iac/iac_title?iact=511. The rules and the affected statutes also are published in Indiana School Laws and Rules.

Please note that, at this time, the department only seeks approval to initiate the rulemaking process. The **SBOE** will have opportunities during future meetings to discuss, review, and approve the proposed rules, including the rules' language. We are only seeking approval to initiate the rulemaking process.

Again, the adoption of rules requires a very specific process, which is governed by the Indiana Code. Following is a general guideline for that process.

- New legislation sets forth required rules to be adopted by the respective agencies.
- The legislation is review and drafting of the proposed language for the rules may begin.
- The **SBOE** approves the initiation of the rulemaking process (the **SBOE** also may approve the proposed rule's language in conjunction with approval to initiate the rulemaking process).
- Upon the **SBOE's** approval, a notice of intent to adopt a rule ("NOI") is filed with the Legislative Services Agency ("LSA"). This must be done within sixty-days of the effective date of the statute authorizing the rule. See IC 4-22-2-19(c). The NOI contains very general language about the purpose of the rule.
- The LSA publishes the NOI and assigns the document an LSA Document number (LSA Document #13-XXX).
- If it has not been approved already, the **SBOE** for approves the proposed rule's language.
- Upon the **SBOE's** approval, the proposed rule and an economic impact statement is submitted to the LSA.

- The proposed rule and the economic impact statement is submitted to the Indiana Economic Development Corporation (“IEDC”).
- A public hearing is scheduled, a notice of public hearing is submitted to the LSA, and a notice of public hearing is published in a Marion County newspaper. The public hearing must take place at least twenty-one days after the proposed rule is posted on the LSA’s website.
- The IEDC submits written comments, if any, on the proposed rule at least seven days prior to the hearing. The comments are made available to the public.
- The public hearing is held and comments, if any, are addressed.
- The **SBOE** approves the adoption of the final rule (the final rule must reflect any changes to the proposed rule).
- All necessary documents are submitted to the Attorney General in the prescribed format and order for review and approval.
- Upon the Attorney General’s approval, the Attorney General will forward the rule to the Governor for approval.
- A rule must be adopted and approved by the Governor within one year of the publication of the NOI. If this deadline cannot be met, a written notice to the chairperson of the Administrative Rules Oversight Committee must be sent within 250 days of the publication of the NOI. See IC 4-22-2-25.
- Rules also may be recalled or withdrawn.