



Reprinted
February 15, 2011

HOUSE BILL No. 1130

DIGEST OF HB 1130 (Updated February 14, 2011 5:03 pm - DI 51)

Citations Affected: IC 4-21.5.

Synopsis: Opportunity to correct violation. Imposes a duty on an agency under certain circumstances to give a person an opportunity to correct an alleged violation of law that is discovered in an inspection.

Effective: July 1, 2011.

Koch, Lehman, Reske, Goodin

January 6, 2011, read first time and referred to Committee on Government and Regulatory Reform.
January 11, 2011, reported — Do Pass.
February 14, 2011, read second time, amended, ordered engrossed.

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HB 1130—LS 6747/DI 51+



First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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HOUSE BILL No. 1130

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

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

1 SECTION 1. IC 4-21.5-2-7 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2011]: **Sec. 7. IC 4-21.5-2.5 applies to all agencies in the executive**
4 **department of state government, including the administrative**
5 **department.**

6 SECTION 2. IC 4-21.5-2.5 IS ADDED TO THE INDIANA CODE
7 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2011]:

9 **Chapter 2.5. Opportunity to Correct**

10 **Sec. 1. Except as provided in sections 2 and 3 of this chapter,**
11 **this chapter applies to the resolution of an alleged violation of a**
12 **state rule within the jurisdiction of an agency that is discovered in**
13 **an inspection conducted after June 30, 2011.**

14 **Sec. 2. This chapter does not apply if:**

15 **(1) the agency conducting the inspection determines that the**
16 **alleged violation:**

17 **(A) represents intentional misconduct or an act of fraud by**

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1 a responsible person or an agent of the responsible person;
 2 (B) is not correctable within a reasonable time, as
 3 determined by the agency;
 4 (C) demonstrates, by a continuing pattern of conduct, a
 5 willful disregard by the responsible person of the person's
 6 obligation to remedy the errors after the responsible
 7 person becomes aware of the errors; or
 8 (D) constitutes an immediate risk to:
 9 (i) any person;
 10 (ii) the public health, safety, or welfare; or
 11 (iii) the environment;
 12 (2) another statute (including IC 13-30-3) provides a
 13 substantially similar procedure for correction of an alleged
 14 violation of a rule before the agency:
 15 (A) imposes a sanction on a person; or
 16 (B) terminates a legal right, duty, privilege, immunity, or
 17 other legal interest of a person;
 18 (3) application of this chapter to a violation would violate a
 19 federal law or regulation;
 20 (4) the alleged violation is a violation of an ethics code or
 21 another rule governing the conduct of an agency employee or
 22 contractor in the procurement or performance of services or
 23 the delivery of property to a governmental entity; or
 24 (5) the alleged violation was discovered as part of the
 25 preparation of a health care licensing and certification survey
 26 by the department of health.

27 **Sec. 3. This chapter does not limit an agency's authority to issue**
 28 **an emergency or a temporary order under IC 4-21.5-4 or another**
 29 **law if:**
 30 (1) an emergency exists; or
 31 (2) a statute authorizes the agency to issue a temporary order
 32 or otherwise take immediate agency action.

33 **Sec. 4. As used in this chapter, "inspection" means:**
 34 (1) visual analysis; or
 35 (2) performance of tests;
 36 undertaken to evaluate the operation, use, or condition of real or
 37 personal property.

38 **Sec. 5. As used in this chapter, "violation" refers to a violation**
 39 **of a state rule adopted by an agency.**

40 **Sec. 6. If an investigation discloses a possible violation, the**
 41 **agency shall proceed under:**
 42 (1) section 7 of this chapter; or

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1 (2) first section 7 of this chapter and then section 10 of this
2 chapter.

3 **Sec. 7. The agency shall:**

4 (1) notify the alleged violator in writing that the agency
5 believes a violation may exist; and

6 (2) extend an offer in writing to the alleged violator giving the
7 alleged violator an opportunity to enter into a corrective plan
8 to correct the alleged violation before the agency imposes a
9 civil penalty or takes another enforcement action permitted
10 under section 10 of this chapter or another law.

11 **Sec. 8. (a) The notice to the alleged violator under section 7 of
12 this chapter must include the following:**

13 (1) A description of the actions that must be taken to correct
14 the alleged violation.

15 (2) The date before which the alleged violator must enter into
16 a corrective plan with the agency in order to avoid an
17 enforcement action under section 10 of this chapter or
18 another law.

19 (3) A statement that an alleged violator may enter into a
20 corrective plan without admitting that the violation occurred.

21 (b) The agency may condition an offer on a requirement that the
22 alleged violator take one (1) or more actions to protect the safety
23 and property of other persons during the time in which the alleged
24 violator reviews the proposed corrective plan.

25 (c) A corrective plan must require the alleged violator to notify
26 the agency within the time specified in the corrective plan that the
27 violation has been corrected.

28 **Sec. 9. The agency shall determine if the alleged violator has
29 substantially corrected the violation and notify the person whether
30 the person is in substantial compliance with the applicable rule not
31 more than thirty (30) days after the earlier of the date that:**

32 (1) the alleged violation must be corrected under the
33 corrective plan; or

34 (2) the alleged violator notifies the agency that the alleged
35 violator has corrected the violation.

36 **Sec. 10. If:**

37 (1) a corrective plan is not entered into; or

38 (2) an alleged violator fails to substantially correct an alleged
39 violation within the time specified in a corrective plan entered
40 into under this chapter;

41 the agency may issue a corrective order and take any enforcement
42 action authorized by law for the violation.

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1 **Sec. 11. The following are public records:**
2 **(1) A corrective plan entered into under this chapter.**
3 **(2) The results of an inspection under section 9 of this chapter.**
4 **(3) Any corrective order described in section 10 of this**
5 **chapter are public records.**
6 **An agency shall retain the public records described in subdivisions**
7 **(1) through (3) in accordance with the appropriate retention**
8 **schedule established under IC 5-15.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1130, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

HINKLE, Chair

Committee Vote: yeas 10, nays 0.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1130 be amended to read as follows:

Page 1, line 3, delete "an agency" and insert "**all agencies**".

Page 1, line 4, after "administrative" insert "**department.**".

Page 1, delete lines 5 through 6.

Page 1, line 11, delete "This" and insert "**Except as provided in sections 2 and 3 of this chapter, this**".

Page 1, line 12, after "state" delete "law or".

Page 1, line 12, delete "or federal law or regulation".

Page 1, line 14, delete "2011, unless:" and insert "**2011.**".

Page 1, between lines 14 and line 15, begin a new paragraph and insert:

"Sec. 2. This chapter does not apply if:"

Page 2, line 14, delete "law, rule, or regulation" and insert "**rule**".

Page 2, line 17, delete "or".

Page 2, line 19, delete "regulation." and insert "**regulation;**

(4) the alleged violation is a violation of an ethics code or another rule governing the conduct of an agency employee or contractor in the procurement or performance of services or the delivery of property to a governmental entity; or

(5) the alleged violation was discovered as part of the preparation of a health care licensing and certification survey by the department of health.

Sec. 3. This chapter does not limit an agency's authority to issue an emergency or a temporary order under IC 4-21.5-4 or another law if:

(1) an emergency exists; or

(2) a statute authorizes the agency to issue a temporary order or otherwise take immediate agency action.

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Sec. 4. As used in this chapter, "inspection" means:

- (1) visual analysis; or**
- (2) performance of tests;**

undertaken to evaluate the operation, use, or condition of real or personal property.

Sec. 5. As used in this chapter, "violation" refers to a violation of a state rule adopted by an agency."

Page 2, line 20, delete "2." and insert "6."

Page 2, line 22, delete "3" and insert "7".

Page 2, line 23, delete "3" and insert "7".

Page 2, line 23, delete "4" and insert "10".

Page 2, line 25, delete "3. (a)" and insert "7."

Page 2, line 28, after "(2)" insert "**extend an**".

Page 2, line 28, after "offer" insert "**in writing to**".

Page 2, line 28, after "violation" insert "**giving the alleged violator**".

Page 2, line 28, after "into" delete "an" and insert "**a corrective plan to correct the alleged violation before the agency imposes a civil penalty or takes another enforcement action permitted under section 10 of this chapter or another law.**".

Page 2, delete lines 29 through 32, begin a new paragraph and insert:

"Sec. 8. (a) The notice to the alleged violator under section 7 of this chapter must include the following:

- (1) A description of the actions that must be taken to correct the alleged violation.**
- (2) The date before which the alleged violator must enter into a corrective plan with the agency in order to avoid an enforcement action under section 10 of this chapter or another law."**

Page 2, line 33, delete "(c) An", begin a new line block indented and insert:

"(3) A statement that an".

Page 2, line 33, delete "an agreed order" and insert "**a corrective plan**".

Page 2, between lines 34 and 35, begin a new paragraph and insert:

"(b) The agency may condition an offer on a requirement that the alleged violator take one (1) or more actions to protect the safety and property of other persons during the time in which the alleged violator reviews the proposed corrective plan."

Page 2, line 35, delete "(d) An agreed order", begin a new paragraph and insert:

"(c) A corrective plan".

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Page 2, line 36, delete "agreed order" and insert "**corrective plan**".

Page 2, line 37, delete "Not more than thirty (30) days after".

Page 2, delete line 38.

Page 2, line 39, delete "correction, the", begin a new paragraph and insert:

"Sec. 9. The".

Page 2, line 41, delete "law," and insert "**rule not more than thirty (30) days after the earlier of the date that:**

(1) the alleged violation must be corrected under the corrective plan; or

(2) the alleged violator notifies the agency that the alleged violator has corrected the violation."

Page 2, delete line 42.

Page 3, line 1, delete "4." and insert "**10**".

Page 3, line 2, delete "an agreed order" and insert "**a corrective plan**".

Page 3, line 4, delete "an agreement" and insert "**a corrective plan**".

Page 3, line 5, delete "section 3 of".

Page 3, line 6, delete "notice of violation" and insert "**corrective order**".

Page 3, after line 7, begin a new paragraph and insert:

"Sec. 11. The following are public records:

(1) A corrective plan entered into under this chapter.

(2) The results of an inspection under section 9 of this chapter.

(3) Any corrective order described in section 10 of this chapter are public records.

An agency shall retain the public records described in subdivisions (1) through (3) in accordance with the appropriate retention schedule established under IC 5-15."

(Reference is to HB 1130 as printed January 12, 2011.)

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