

IC 14-10-2

Chapter 2. Powers and Duties of Commission

IC 14-10-2-0.3

Transfer of power to establish fees; treatment of rules

Sec. 0.3. On May 13, 2005, the powers of the department to establish fees are transferred to the commission. After May 13, 2005, the commission may exercise any power delegated to the department to establish fees, and a rule of the department that establishes a fee for any of the following shall be treated as a rule of the commission:

- (1) Programs of the department or the commission.
- (2) Facilities owned or operated by the department, the commission, or a lessee of the department or the commission.
- (3) Licenses issued by the commission, the department, or the director of the department.
- (4) Inspections or other similar services under this title performed by the department or an assistant or employee of the department.

As added by P.L.220-2011, SEC.291.

IC 14-10-2-1

Powers of commission

Sec. 1. The commission may do the following:

- (1) Take the action that is necessary to enable the state to participate in the programs set forth in 16 U.S.C. 470 et seq.
- (2) Promulgate and maintain a state register of districts, sites, buildings, structures, and objects significant in American or Indiana history, architecture, archeology, and culture and expend money for the purpose of preparing comprehensive statewide historic surveys and plans, in accordance with criteria established by the commission, that comply with the standards and regulations promulgated by the United States Secretary of the Interior for the preservation, acquisition, and development of the properties.
- (3) Establish in accordance with criteria established by the United States Secretary of the Interior a program of matching grants-in-aid to public agencies for projects having as their purpose the preservation for public benefit of properties that are significant in American or Indiana history, architecture, archeology, and culture.
- (4) Accept grants from public and private sources, including those provided under 16 U.S.C. 470 et seq.
- (5) Establish fees for the following:
 - (A) Programs of the department or the commission.
 - (B) Facilities owned or operated by the department or the commission or a lessee of the department or commission.
 - (C) Licenses issued by the commission, the department, or the director.
 - (D) Inspections or other similar services under this title performed by the department or an assistant or employee of

the department.

(6) Adopt rules under IC 4-22-2 for the establishment of fees under subdivision (5).

As added by P.L.1-1995, SEC.3. Amended by P.L.246-2005, SEC.115.

IC 14-10-2-2

Appointment of administrative law judges; removal of judges; division of hearings; appointment of special judge

Sec. 2. (a) The commission shall appoint administrative law judges. An administrative law judge:

(1) is subject to IC 4-15-2; and

(2) may be removed for cause under:

(A) IC 4-21.5;

(B) IC 4-15-2, through application of the standards for removal for cause of a person in the state service (as defined in IC 4-15-2-3.8); or

(C) applicable provisions of the code of judicial conduct.

(b) The commission shall create a division of hearings. The division of hearings shall assist the commission in performing the functions of this section. The director of the division of hearings may appoint a special administrative law judge.

(c) A person who is not appointed by:

(1) the director of the division of hearings; or

(2) the commission;

may not act as an administrative law judge.

As added by P.L.1-1995, SEC.3. Amended by P.L.99-2005, SEC.4.

IC 14-10-2-2.5

Consolidated proceedings

Sec. 2.5. (a) A person who is the party in a hearing under this title or IC 4-21.5-7 may move to have the:

(1) environmental law judge appointed under IC 4-21.5-7; or

(2) administrative law judge appointed under section 2 of this chapter;

consolidate multiple proceedings that are subject to the jurisdiction of both the office of environmental adjudication and the division of hearings.

(b) The environmental law judge or the administrative law judge shall grant the motion made under subsection (a) if the following findings are made:

(1) The proceedings include the following:

(A) Common questions of law or fact.

(B) At least one (1) person, other than the department or the department of environmental management, who is a party to all the proceedings.

(C) Issues of water quality, water quantity, or both.

(2) Consolidation may support administrative efficiency.

(c) If a motion to consolidate proceedings has been granted under subsection (b), the hearing must be conducted by a panel that

consists of at least one (1) environmental law judge and one (1) administrative law judge. The panel is the ultimate authority for matters authorized under IC 4-21.5-7-5 and this title. Any party, including the department and the department of environmental management, may petition an appropriate court for judicial review of a final determination of the panel.

(d) The office of environmental adjudication and the division of hearings shall adopt joint rules to implement this section.

As added by P.L.84-2008, SEC.3.

IC 14-10-2-3

Commission as ultimate authority of department

Sec. 3. Except as provided in section 2.5 of this chapter and IC 14-34-2-2, the commission is the ultimate authority of the department under IC 4-21.5.

As added by P.L.1-1995, SEC.3. Amended by P.L.84-2008, SEC.4.

IC 14-10-2-4

Adoption of rules

Sec. 4. (a) The commission shall adopt rules under IC 4-22-2 to carry out the commission's duties under this title.

(b) The commission may adopt rules to exempt an activity from licensing under this title, except:

- (1) IC 14-34;
- (2) IC 14-36-1; and
- (3) IC 14-38-2;

if the activity poses not more than a minimal potential for harm.

(c) Except as provided in subsection (d), whenever the department or the director has the authority to adopt rules under IC 4-22-2, the commission shall exclusively exercise the authority.

(d) Emergency rules adopted under section 5 of this chapter shall be adopted by the director.

As added by P.L.1-1995, SEC.3.

IC 14-10-2-5

Emergency rules

Sec. 5. (a) The department may adopt emergency rules under IC 4-22-2-37.1 to carry out the duties of the department under the following:

- (1) IC 14-9.
- (2) This article.
- (3) IC 14-11.
- (4) IC 14-12-2.
- (5) IC 14-14.
- (6) IC 14-17-3.
- (7) IC 14-18, except IC 14-18-6 and IC 14-18-8.
- (8) IC 14-19-1 and IC 14-19-8.
- (9) IC 14-21.
- (10) IC 14-22-3, IC 14-22-4, and IC 14-22-5.
- (11) IC 14-23-1.

- (12) IC 14-25, except IC 14-25-8-3, IC 14-25-11, and IC 14-25-13.
- (13) IC 14-26.
- (14) IC 14-27.
- (15) IC 14-28.
- (16) IC 14-29.
- (17) IC 14-35-1, IC 14-35-2, and IC 14-35-3.
- (18) IC 14-37.
- (19) IC 14-38, except IC 14-38-3.

(b) A rule adopted under subsection (a) expires not later than one (1) year after the rule is accepted for filing by the publisher of the Indiana Register.

As added by P.L.1-1995, SEC.3. Amended by P.L.186-2003, SEC.34; P.L.123-2006, SEC.32; P.L.140-2011, SEC.2; P.L.167-2011, SEC.13.

IC 14-10-2-6

Notices of violation

Sec. 6. (a) The commission may issue a notice of violation to a person who violates a law administered by the department for which a misdemeanor or an infraction penalty is established. If the person:

- (1) receives the notice; and
- (2) fails to abate the violation within a period of not less than fifteen (15) days specified in the notice;

the commission may impose a charge that does not exceed the maximum amount that may be assessed by a court for committing the violation.

(b) IC 4-21.5 applies to proceedings by the commission under this section. The department has the burden of proving the alleged violation by a preponderance of the evidence.

(c) A separate notice of violation may be issued or a separate charge imposed for each day a violation occurs.

(d) The person may establish as an affirmative defense the filing by a prosecuting attorney of a misdemeanor information or infraction complaint based on the same event as that upon which the notice of violation was based. The person has the burden of proving the affirmative defense.

(e) The remedy provided by this section is supplemental to other remedies.

As added by P.L.1-1995, SEC.3.

IC 14-10-2-7

Treatment of certain rules

Sec. 7. Any rule:

- (1) adopted by the director of the department of natural resources under IC 14-2 (before its repeal); and
- (2) in effect on June 30, 1990;

shall be treated after June 30, 1990, as a rule adopted by the natural resources commission.

As added by P.L.220-2011, SEC.292.