

IC 8-23-20

Chapter 20. Regulation of Billboards and Junkyards

IC 8-23-20-1

Agreements with United States Secretary of Commerce

Sec. 1. (a) The department and the United States Secretary of Commerce shall enter into agreements under 23 U.S.C. concerning the regulation of billboards, signs, junkyards, and scrap metal processing areas in areas adjacent to the interstate and primary highway systems. The agreements must conform to the provisions of 23 U.S.C. to ensure that federal funds to Indiana are continued.

(b) An agreement between the state and the United States Secretary of Commerce entered into under 23 U.S.C. 131 must contain the definition of "unzoned commercial or industrial area" found in IC 8-23-1-43. If the state has received from the Secretary a formal notice of a proposed determination to withhold funds from the state because of an asserted unacceptability of the definition, the governor shall modify the definition. The modification may be made during a hearing on the notice held by the Secretary under 23 U.S.C. 131, or, if as a matter of law the Secretary decides to withhold funds prior to a hearing, the governor:

- (1) may modify the definition before a hearing; and
- (2) shall request a hearing under 23 U.S.C. 131.

As added by P.L.18-1990, SEC.229.

IC 8-23-20-2

Form of agreements; negotiation

Sec. 2. The regulatory standards set forth in an agreement described in section 1(a) of this chapter must be consistent with customary use in Indiana. The agreement must be in a form that is in the best interests of the state and may be of a duration and subject to terms and provisions for modification that the governor considers advisable. In negotiating the agreement, the governor shall consider the following factors:

- (1) The actual availability of federal funds.
- (2) The imminence of a sanction against the state for a violation of 23 U.S.C. 131.
- (3) The enactment of an amendment to 23 U.S.C. 131 or the regulations promulgated under 23 U.S.C. 131, or the possibility of an amendment.
- (4) The scope of an agreement entered into by another state with the Secretary under 23 U.S.C. 131.

As added by P.L.18-1990, SEC.229.

IC 8-23-20-3

Determination of legality of Secretary's actions

Sec. 3. The attorney general shall institute proceedings under 23 U.S.C. 131 to obtain a judicial determination of the legality of the determination of the United States Secretary of Commerce if the Secretary makes a final determination to:

- (1) withhold funds from Indiana;
- (2) fail to agree with Indiana as to the size, lighting, and spacing of signs; or
- (3) fail to agree with Indiana as to unzoned commercial or industrial areas in which signs may be erected and maintained.

As added by P.L.18-1990, SEC.229.

IC 8-23-20-4

Signs in adjacent areas; standards

Sec. 4. Signs located in an adjacent area must conform to the standards of size, lighting, and spacing set forth in rules adopted by the department under the provisions of an agreement under section 1 of this chapter.

As added by P.L.18-1990, SEC.229.

IC 8-23-20-5

Signs in unzoned and zoned commercial and industrial areas

Sec. 5. Signs located in unzoned commercial or industrial areas and zoned commercial or industrial areas must conform to the standards of size, lighting, and spacing set forth in rules adopted by the department under the provisions of an agreement under section 1 of this chapter.

As added by P.L.18-1990, SEC.229.

IC 8-23-20-6

Prohibited signs

Sec. 6. The following signs may not be erected or maintained in an adjacent area:

- (1) Signs that are illegal under state statutes or rules.
- (2) Signs not securely affixed to a substantial structure.
- (3) Signs that attempt or appear to attempt to regulate, warn, or direct the movement of traffic or that interfere with, imitate, or resemble an official traffic sign, signal, or device.
- (4) Signs erected or maintained upon trees, or painted or drawn upon rocks or other natural features.
- (5) Signs that are not consistent with this chapter.

As added by P.L.18-1990, SEC.229.

IC 8-23-20-7

Authorized signs

Sec. 7. The following signs may be erected outside of urban areas beyond six hundred and sixty (660) feet of the right-of-way visible from the traveled way of a highway on the interstate or primary system with the intent of a message being read from the traveled way:

- (1) Directional or official signs and notices.
- (2) Signs advertising the sale or lease of the property upon which the signs are located.
- (3) Signs indicating the name of the business, activities, or profession conducted on the property, or identifying the goods

produced or sold, or services rendered on the property.
As added by P.L.18-1990, SEC.229.

IC 8-23-20-8

Directional signs within 200 feet of right-of-way

Sec. 8. A person may not erect or maintain in the right-of-way of a highway in the state highway system, or within two hundred (200) feet of the right-of-way, a sign or device directing or indicating on what highway or route a person should travel to reach a designated place or highway without the written consent of the department. The department may remove a sign or device erected or maintained in violation of this section.

As added by P.L.18-1990, SEC.229.

IC 8-23-20-9

Removal of previously existing nonconforming signs

Sec. 9. (a) A sign lawfully erected in an adjacent area that does not conform to this chapter after June 30, 1968, is not required to be removed until the end of the fifth year after the sign becomes nonconforming.

(b) A sign located beyond six hundred sixty (660) feet of the right-of-way, visible from the traveled way of a highway on the interstate or primary system, that was lawfully erected before July 1, 1976, and does not conform to this chapter is not required to be removed until the end of the fifth year after the sign becomes nonconforming.

As added by P.L.18-1990, SEC.229.

IC 8-23-20-10

Acquisition of nonconforming signs

Sec. 10. The department may acquire and shall pay just compensation for the removal of signs that do not conform to this chapter. A removal by the department or sign owner under this chapter constitutes a taking, and the owner shall be compensated under IC 32-24-1. Compensation shall be paid for the following:

(1) The taking from the owner of a sign of all rights, titles, and interests in the sign, and of the owner's leasehold or other interest in the land.

(2) The taking from the owner of the real property on which the sign is located and of the right to erect and maintain signs on the real property.

As added by P.L.18-1990, SEC.229. Amended by P.L.2-2002, SEC.50.

IC 8-23-20-11

Payment of compensation

Sec. 11. Compensation under section 10 of this chapter shall be paid to a person entitled to compensation upon the presentation to the department of information that the department requires. The claim for compensation must be filed within one hundred eighty (180) days

after the removal is completed. The state's share of the compensation shall be paid from funds appropriated under this section.

As added by P.L.18-1990, SEC.229.

IC 8-23-20-12

Compensation determination; civil actions

Sec. 12. If a claimant under section 11 of this chapter and the department do not reach agreement on the amount of compensation to be paid within one hundred twenty (120) days after the claim is filed, the claimant may file a civil action to have the compensation determined. An action under this section shall be filed in a court of general jurisdiction in either the county where the sign and real property are located or in the county in which the claimant resides. The county of residence of a corporation shall be determined under the applicable statutes. An action under this section shall be filed not later than one (1) year after the filing with the department of a claim for compensation under section 10 of this chapter.

As added by P.L.18-1990, SEC.229.

IC 8-23-20-13

Enforcement of chapter

Sec. 13. (a) The department shall enforce this chapter.

(b) When the department is notified by a governmental agency of a possible violation of this chapter, the department shall determine whether a violation exists. Whenever the department determines a violation exists, the department shall enter a resolution setting out the nature, extent, and location of the violation and refer the resolution to the attorney general.

As added by P.L.18-1990, SEC.229.

IC 8-23-20-14

Injunctions; criminal proceedings

Sec. 14. Whenever the attorney general receives a resolution under section 13 of this chapter, the attorney general shall commence an action in a court having jurisdiction to enjoin the violation of this chapter. The attorney general may also request the prosecuting attorney of the judicial circuit in which the violation has occurred to institute criminal proceedings against the persons responsible for violation of this chapter. The prosecuting attorney shall institute criminal proceedings if requested to do so by the attorney general.

As added by P.L.18-1990, SEC.229.

IC 8-23-20-15

Zoning powers; limitations

Sec. 15. (a) Subsection (c) does not apply to signs erected before March 15, 1986.

(b) A board, commission, council, governmental body, or political subdivision that has the legal authority to zone land has authority to zone areas for commercial or industrial purposes. Except as provided in subsection (c), a zoning action taken by a body described in this

subsection may be taken under this chapter.

(c) A zoning action taken by a body described in subsection (a) will not be accepted under this chapter if the action is:

- (1) not part of a comprehensive plan; and
- (2) taken primarily to permit the erection of signs in an adjacent area that is outside an urban area and visible from the traveled way of a highway in the interstate or primary highway system.

As added by P.L.18-1990, SEC.229.

IC 8-23-20-16

Removal, taking, and appropriation of signs; limitations

Sec. 16. (a) Subsection (b) does not apply to:

- (1) actions taken by the department under this chapter; or
- (2) the removal, taking, or appropriation of a sign, display, or device prohibited under section 6 of this chapter.

(b) Before an outdoor advertising sign, display, or device is removed, taken, or appropriated through the use of zoning or another power or authority of the state, a state agency, or political subdivision:

- (1) the value of the sign, display, or device shall be determined by the taking authority without the use of an amortization schedule; and
- (2) the owners of the sign, display, or device and of the real property upon which the sign, display, or device is situated must be paid full and just compensation for the taking.

As added by P.L.18-1990, SEC.229.

IC 8-23-20-17

Location of junkyards and scrap metal processing facilities

Sec. 17. A person may not establish, operate, or maintain a junkyard or scrap metal processing facility that is within one thousand (1,000) feet of the nearest edge of a right-of-way of an interstate or primary highway, unless the junkyard or facility conforms to one (1) of the following conditions:

- (1) It is screened by natural objects, plantings, fences, or other appropriate means so it is not visible from the main-traveled way of the system.
- (2) It is located within an area that is zoned for industrial use.
- (3) It is located within an unzoned industrial area.
- (4) It is not visible from the main-traveled way.

As added by P.L.18-1990, SEC.229.

IC 8-23-20-18

Screening of junkyards and scrap metal facilities

Sec. 18. The department shall, if feasible, place a screen on the highway right-of-way or an area acquired for the purpose between a highway and a junkyard or a scrap metal processing facility that is lawfully located within one thousand (1,000) feet of a highway in the interstate or primary system so that the junkyard or facility is not visible from the main-traveled way, unless the junkyard or facility is

located in an industrial area.
As added by P.L.18-1990, SEC.229.

IC 8-23-20-19

Rules and regulations for screening and fencing

Sec. 19. The department shall adopt rules to govern the location, planting, construction, and maintenance of screens and fences required under this chapter.

As added by P.L.18-1990, SEC.229.

IC 8-23-20-20

Acquisition of junkyard or scrap metal processing facility property; relocation and removal costs

Sec. 20. If the department determines that the topography of the land adjoining a highway in the interstate or primary system will not permit adequate screening of a junkyard or scrap metal processing facility, or that the screening of a junkyard or facility would not be economically feasible, the department may acquire the property on which the junkyard or facility stands by gift, purchase, exchange, or condemnation. The department may pay the costs of relocation, removal, or disposal of a junkyard or facility.

As added by P.L.18-1990, SEC.229.

IC 8-23-20-21

Powers of political subdivisions

Sec. 21. A political subdivision may enact and enforce requirements for junkyards and scrap metal processing facilities that are in addition to the requirements of this chapter.

As added by P.L.18-1990, SEC.229.

IC 8-23-20-22

Violations; notice

Sec. 22. (a) A person who violates section 4, 5, or 6 of this chapter commits a Class C infraction. Whenever the department discovers or is given written notice of a violation by a responsible government agency, the department shall give thirty (30) days notice, by certified mail, to the owner of the property upon which the violation exists. If the owner fails to act within thirty (30) days, then each day of maintenance of the violation beginning on the thirty-first day constitutes a separate offense.

(b) A person who violates section 7 of this chapter commits a Class C infraction.

(c) A person who violates section 8 of this chapter commits a Class B misdemeanor. Whenever the department discovers or is given written notice of a violation by a responsible government agency, the department shall give thirty (30) days notice, by certified mail, to the owner of the property upon which the violation exists. If the owner fails to act within thirty (30) days, then each day of maintenance of the violation beginning on the thirty-first day constitutes a separate offense.

As added by P.L.18-1990, SEC.229. Amended by P.L.1-1991, SEC.84.

IC 8-23-20-23

Federal aid; acceptance

Sec. 23. The department may accept an allotment of funds by the United States, or an agency of the United States, appropriated to carry out 23 U.S.C. 131. The department shall take any necessary action to obtain funds allotted under 23 U.S.C. 131 to receive reimbursement for the federal share of the just compensation paid to owners under sections 10 and 20 of this chapter.

As added by P.L.18-1990, SEC.229.

IC 8-23-20-24

Federal aid; appropriation

Sec. 24. The department may not acquire a sign, the real property upon which the sign is situated, a junkyard, or a scrap metal processing facility unless:

- (1) the acquisition costs are eligible for not less than seventy-five percent (75%) federal participation;
- (2) there are sufficient funds appropriated and immediately available to Indiana; and
- (3) the funds have been apportioned by the federal government and notice of the apportionment has been received by the state.

As added by P.L.18-1990, SEC.229.

IC 8-23-20-25

Advertising signs along federally regulated and interstate highways; permits; rules; registration of signs

Sec. 25. (a) The department shall institute a permit system to regulate the erection and maintenance of outdoor advertising signs along:

- (1) the interstate and primary system, as defined in 23 U.S.C. 131(t) on June 1, 1991; and
- (2) any other highways where control of outdoor advertising signs is required under 23 U.S.C. 131.

(b) Except as provided in subsections (c) and (g) and section 25.5(c) of this chapter, a sign may not be erected, operated, used, or maintained in areas described in subsection (a) unless the owner of the sign has obtained a permit under this section.

(c) A permit is not required to erect, operate, use, or maintain the following signs:

- (1) Directional or official signs and notices.
- (2) Signs advertising the sale or lease of the property on which the sign is located.
- (3) Signs that primarily indicate:
 - (A) the name of the business, activity, or profession conducted;
 - (B) the types of goods produced or sold; or
 - (C) the services rendered;

on the property on which the sign is located.

(d) Signs in existence on July 1, 1993, and subject to this section:

(1) must comply with the registration system described in subsection (h); and

(2) are subject to the permit requirement after the department has made the determination described in subsection (g).

(e) The department shall adopt rules under IC 4-22-2 to carry out this section. Rules adopted under this section may be no broader than necessary to implement 23 U.S.C. 131 and 23 CFR 750.

(f) In addition to the requirements of subsection (e), rules adopted under this section must provide the following:

(1) A list of all roadways subject to the permit requirement.

(2) A procedure to appeal adverse determinations of the department under IC 4-21.5, including provisions for judicial review under IC 4-21.5.

(3) A one-time fee of one hundred dollars (\$100) per structure must accompany the permit application. A permit fee may not be charged to a sign that is subject to and complies with the registration system described in subsection (h).

(4) That a permit may not be issued for a sign erected in an adjacent area after January 1, 1968, unless:

(A) the sign is erected in an area described in section 5 of this chapter; or

(B) the permit is a conditional permit issued under subdivision (6).

(5) That a permit may not be issued for a sign erected after June 30, 1976, outside of urban areas, beyond six hundred sixty (660) feet of the right-of-way, visible from the traveled way, and erected with the purpose of a message being read from the traveled way, unless:

(A) the sign is erected in an area described in section 5 of this chapter; or

(B) the permit is a conditional permit issued under subdivision (6).

(6) For the issuance of a conditional permit for a nonconforming sign that has not been acquired under section 10 of this chapter. A conditional permit issued under this subdivision may be revoked if the department subsequently acquires the sign.

(7) That the department is granted the right to enter the real property on which a sign for which a permit under this section has been applied for or issued to perform reasonable examinations and surveys necessary to administer the permit system.

(8) The department may revoke any permit when it is found that the permittee has provided false or misleading information and that such a finding may be cause to subsequently refuse to issue a permit.

(9) Any other provisions necessary to:

(A) administer this section; or

(B) avoid sanctions under 23 U.S.C. 131.

(g) A sign that is subject to and complies with the registration system described in subsection (h) may not be declared unlawful until the later of the following:

- (1) The department has made a determination of permit eligibility under this section.
- (2) December 31, 1993.

(h) A separate application for registration must be submitted to the department for each structure defined in subsection (d) and must:

- (1) be on a form furnished by the department;
- (2) signed by the applicant or an individual authorized in writing to sign for the applicant;
- (3) provide information concerning the size, shape, and nature of the advertising sign, display, or device;
- (4) provide the sign's actual location with sufficient accuracy to enable the department to locate the sign; and
- (5) include a one-time registration fee of twenty-five dollars (\$25).

(i) A sign that is not registered before January 1, 1994, is a public nuisance subject to section 26 of this chapter.

(j) Each registrant shall fasten to each advertising sign or device a label or marker provided by the department that must be plainly visible from the traveled way.

As added by P.L.112-1993, SEC.1. Amended by P.L.66-2007, SEC.4.

IC 8-23-20-25.5

Changeable message signs; rules; permits; erection; compliance

Sec. 25.5. (a) The department may adopt rules under IC 4-22-2 that provide for the issuance of a permit for a changeable message sign erected, operated, used, or maintained in areas described in section 25(a) of this chapter.

(b) A permit authorized by this section may not otherwise violate state or federal law or local ordinances or regulations.

(c) Until the department adopts rules under this section, a person may erect, operate, or use a changeable message sign in an area described in section 25(a) of this chapter, subject to any other requirements of state or federal law or local ordinances or regulations.

(d) This subsection applies to a changeable message sign erected after the owner or operator receives a permit from the department. Notwithstanding any rules adopted by the department after the issuance of the permit, a changeable message sign that is in compliance with the rules in effect at the time a permit is granted for the changeable message sign is considered to be in compliance with the department's rules.

As added by P.L.66-2007, SEC.5.

IC 8-23-20-26

Signs in violation of chapter; public nuisance; notice; remedies

Sec. 26. (a) A sign that is in violation of this chapter or rules

adopted under this chapter is a public nuisance.

(b) If the department determines that a public nuisance exists, the department shall give notice under subsection (c) to:

- (1) the owner of the property on which the public nuisance is located; and
- (2) the owner of the public nuisance, if the owner of the public nuisance can be determined by reasonable inquiry.

(c) The department shall give notice of the determination under IC 4-21.5-3-6. The notice must include the following information:

- (1) The name and address of the owner of the property or the owner of the sign.
- (2) A description of the sign, including its location, that has been determined to be a public nuisance under this section.
- (3) That the sign has been determined to be a public nuisance and the reasons for the determination.
- (4) That the person receiving the notice has thirty (30) days after the date on which the notice was sent to:
 - (A) remove the sign from the property on which the sign is located; or
 - (B) file a petition for review under IC 4-21.5.
- (5) That if after thirty (30) days the sign has not been removed or a petition for review has not been filed, the department will remove the sign or cause the sign to be removed.
- (6) That if the department removes the sign or causes the sign to be removed, the person receiving notice will be charged the cost of the removal of the sign, including all administrative costs, and a lien will be imposed on the property under subsection (e).
- (7) Any other information the department determines to be necessary.

(d) To qualify for judicial review under IC 4-21.5-5 of a final agency action taken under this section, the person filing the petition for review must post a bond of five thousand dollars (\$5,000) with the clerk of the court in which the petition for review is filed. If the court determines that the request for review was:

- (1) frivolous;
- (2) in bad faith; or
- (3) taken for the primary purpose of delaying the removal of a sign that is in violation of this chapter;

the bond shall be forfeited to the state highway fund.

(e) If after:

- (1) thirty (30) days following the date on which the notice was sent under subsection (c):
 - (A) a petition for review of the determination has not been filed; and
 - (B) the sign that is determined to be a public nuisance has not been removed; or
- (2) a petition for review has been filed, a final determination that the sign is a public nuisance has been made, and the sign that is determined to be a public nuisance has not been

removed;

the department shall enter the property and remove the public nuisance or cause the public nuisance to be removed. The department shall bill the owner of the property on which a sign that is determined to be a public nuisance is located for the cost of the removal. If the bill remains unpaid for at least thirty (30) days following the date on which the bill was issued, the department shall file the bill with the clerk of the circuit court of the county in which the property is located. The clerk shall immediately enter the bill on the judgment docket against the owner of the property as a lien against the property. The lien may be foreclosed in the same manner as other judgment liens, without relief from valuation or appraisement laws or right of redemption. Each owner of the property on which a sign that is determined to be a public nuisance is located is jointly and severally liable for the costs of the removal of the sign under this subsection.

(f) A lease or other contract for the display of a sign that is determined to be a public nuisance under this section is against public policy and may not be enforced. An owner from whom the costs of removing a sign that is determined to be a public nuisance are collected under subsection (e) is entitled to contribution from any other owners of the property.

As added by P.L.112-1993, SEC.2.