

Members

Rep. Robert Hoffman, Chair
Rep. Phyllis Pond
Rep. Robert Bischoff
Rep. Paul Robertson
Sen. Thomas Weatherwax
Sen. John Waterman
Sen. James Lewis
Sen. Richard Young



NATURAL RESOURCES STUDY COMMITTEE

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Authority: IC 2-5-5-1

MEETING MINUTES¹

Meeting Date: September 12, 2005
Meeting Time: 1:00 p.m.
Meeting Place: Potawatomi Inn
Pokagon State Park
Meeting City: Angola, Indiana
Meeting Number: 2

Members Present: Rep. Robert Hoffman, Chair; Rep. Phyllis Pond; Rep. Robert Bischoff; Rep. Paul Robertson; Sen. Thomas Weatherwax; Sen. James Lewis.

Members Absent: Sen. John Waterman; Sen. Richard Young.

Call to Order. Rep Hoffman, Chair of the Natural Resources Study Committee, called the meeting to order and reviewed the procedures of the Committee.

Lake Patrol Grants. Major Sam Purvis, Boating Law Administrator, DNR Law Enforcement, provided a summary of activities pertaining to lake patrol grants. (See Exhibit I.) Three counties are currently participating. An additional three are interested in participating in the future. Major Purvis provided an example of coordinated efforts that led to the prosecution of an underage driver involved in an accident and who left the scene of the accident. Major Purvis indicated that the lake patrol grants program was easy to administer, noting that counties have a one-sheet form to complete in order to obtain reimbursement. He noted that the Open Container Law does not apply to boats. All other laws pertaining to intoxication apply to boats.

Lake Management Work Group. Major Purvis explained that the Lake Management Work Group was created by legislation originally. Many different people from different backgrounds have served on the group which consists of 28 members. The work group has made over 40 recommendations over a two-year period. The group works without per diem.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

During the past year, 23 people have had their licenses suspended with boating violations. Licenses are suspended when the driver incurs 17 points. A driver is assessed 8 points for dangerous operation of a watercraft.

The Department of Natural Resources (DNR) was given jurisdiction over the lawful nonconforming use of piers in 2000. The Natural Resources Commission (NRC) has adopted a rule that would allow the DNR to shorten existing long piers.

Out-of-State Boater Registration. Major Purvis explained that boat registration and titling was moved to the Bureau of Motor Vehicles (BMV) for the convenience of boaters. Property tax is no longer collected on boats; however, an excise tax is assessed. Fees collected go to counties. The law allows out-of-state boaters to operate for three weeks before excise tax is collected and six months before the boater must register the boat. To pay the fees, the boat owner must go to a BMV branch. An estimated 41,000 boat owners pay excise tax, but do not register. (See Exhibit 2.)

On Brookville Reservoir, at Kent's Marina, an estimated 75% of boat owners are out-of-state boaters. Most people comply if they know what they are supposed to pay. Major Purvis plans to meet with the BMV on September 29th to make some BMV employees know how to collect the excise tax for out-of-state boat owners. Collecting the tax has been a problem in the past. With 852 boats at Brookville with an \$8.00 fee, collections should exceed \$100,000 from this one lake.

Kathy Kurtz inquired about where the Lake and River Enhancement (LARE) fees go. Major Purvis explained that one-third of the fee goes to DNR law enforcement, with 20% of this amount going to law enforcement grants. Two-thirds of the LARE fee goes to the DNR Fish and Wildlife Division, with one-half used for watershed management and one-half used for lake enhancement (e.g., dredging, management of plants, etc.)

Paul Greenwalt asked how much money was collected. Major Purvis indicated that \$3.3 million was collected.

Channeling and Funneling. Nat Noland, property owner and Legal Committee Chair for the Glen Eyre Association, provided the Committee with comments regarding discussion of "channeling and funneling." (See Exhibit 3.)

Jim Hebenstreit, Deputy Director, DNR Division of Water, explained channeling and funneling and distributed the definition of a "group pier" as defined in rule. (See Exhibit 4.) DNR needs to develop criteria for piers. With respect to funneling, the increase in the number of homes with sewers and city water has increased the population density which has resulted in higher density on piers. They have looked at what other states are doing with this problem.

Niann Lautzenhiser, Hamilton Lake, stated that the channeling problem rests with the permitting system. She indicated that to obtain a DNR permit the law indicates that 51% of affected property owners must agree. Certain developers claimed to have 60% when in reality they only had 40%. Nonetheless, the permit was granted by the DNR. She wanted to know if the laws would be enforced in the future, noting that developers are figuring out ways to skirt the law. She would like DNR to determine how to calculate lake frontage.

Coleen Boyd, Hamilton Lake, agreed with Ms. Lautzenhiser.

Bill Schmidt, Lake James, described a case where a pier was ruled to be a nonconforming structure. The property owners have spent over \$100,000 in legal expenses to uphold the administrative judge's ruling through the appeals process. Developers tell the county that it is

the state's jurisdiction; then they tell the state that it is the county's jurisdiction. Counties and the state need to work together to make sure that they are getting the same story. He would rather have the state have final authority to ensure consistent enforcement.

Carol Mattix, Hamilton Lake Sentinels, explained that much new development is built on or next to wetlands.

Dick Swennunson, Lake Maxinkuckee Association, stated that Culver regulates the shoreline, but that they have not done a good job with piers. He indicated that the state would be best to balance the needs and the interests of all the different groups. He noted that septic tanks are a problem because they drain into the lake.

Ralph Taylor, a citizen of Steuben County and former DNR officer, stated that more than DNR and counties are involved. Other players come from court of appeals cases that give rights and responsibilities to owners and the government. He cited the case of Novak v. Striker, in 1946, that created the concept of "public freshwater lake" from the idea of navigable waters. DNR must use their historical knowledge to create a solution. In 1999, a state committee overturned the Syracuse decision. Legislators did that to give DNR authority over piers (i.e., temporary structures). He added that homeowners with two or three boats are not the problem. He urged the committee to include the word "piers" in the statute.

Jack Dold, LaGrange County Lakes Council, spoke to the issue of funneling. He stated that it is a state problem because the state owns the shoreline and is responsible to control it. Lakes belong to all the citizens of the state. Developers who use funneling are not protecting lakes, but are seeing it as a way to make sales. Mr. Dold indicated that some additional funneling issues have been addressed through county ordinances.

Rep. Pond stated that she would like to see the DNR develop rules to govern these situations.

Seawalls. Mr. Hebenstreit indicated that the DNR had rules to limit materials used in seawalls. There have been attempts by owners to circumvent the law by building walls in the shoreline. He indicated that he would have a presentation at the next meeting.

Mr. Schmidt indicated that one boat on a water with seawalls creates a lot of wave action.

Ms. Lautzenhiser wanted to allow some cement seawalls.

Ms. Kurtz noted that she has seawalls and that her neighbor does not. He has lost 6-8 feet over 20 years. She wants the DNR to regulate the slant and perhaps require stone in front of the cement wall to break the wave action. People use stones when they become aware of the benefit.

Mr. Swennunson noted that fish spawn in front of glacial stone seawalls, but not in front of cement seawalls.

Elimination of Septic Tanks and Cesspools Around Lakes. Sen Weatherwax explained that a key to the vitality of lakes is the septic tank issue; however, the Indiana Department of Environmental Management is more affected by this issue than DNR to the extent that IDEM has jurisdiction over septic tanks.

Sandra Plum, IDEM, explained that IDEM is responsible for water quality. IDEM has a water management team that visits lakes every five years and conducts a detailed analysis. Farm run-off, septic tanks, and many other factors influence water quality. IDEM helps communities form sewer districts to help with septic problems. The State Department of Health (SDH) regulates

septic tanks. Money to help communities create sewer districts is very limited.

Michelle Milligan, SDH, stated that the SDH is beginning new rules on septic systems on lakes. The rules would be different with different types of land (i.e., wetlands, etc.) It has been over ten years since the rules governing septic systems have been modified.

Privatization of State Park Inns. Rep. Pond asked DNR to address the topic of the privatization of state park inns.

Kyle Hupfer, DNR Director, stated that the DNR is looking at this issue, but has not made any decisions. He believes that the DNR has the authority to give a lease to a third contractor. The Ohio contractors just raised rates. Rates for Pokagon are \$79 to \$99 per night.

Rep. Pond asked for a profit and loss (with debt services) for all the inns.

George Pond, citizen, noted that when a third party took over the Ohio parks that the prices went up while the food quality went down.

Ted Bowman, Pokagon State Park Property Manager, indicated that Pokagon State Park is a unique property in that it has tobogganing in the winter. Approximately 800,000 people visit the park each year. The park is developing two new trails. There has been an emerald ash borer problem in the region. The U.S. Forest Service comes in to the park and confiscates wood that campers might bring in from other areas because the wood could contain the larvae of the borer. Approximately 25% of the trees in the park are ash. The only way to combat the borer is to cut the trees within a half-mile radius. Larvae are located under the bark so insecticides do not work.

Adjournment. The Committee was adjourned at 4:05 p.m.