

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 MINUTES<sup>1</sup>

**Meeting Date:** October 4 and 5, 2005  
**Meeting Time:** 1:00 p.m.  
**Meeting Place:** 15179 Old State Road 101, Ainsley's Cafe  
**Meeting City:** Liberty, Indiana  
**Meeting Number:** 4 and 5

**Members Present:** Rep. Robert Hoffman, Chair; Rep. Phyllis Pond; Rep. Robert Bischoff; Sen. Thomas Weatherwax; Sen. James Lewis; Sen. Richard Young.

**Members Absent:** Rep. Paul Robertson; Sen. John Waterman.

**Call to Order.** Representative Hoffman, Chair of the Committee, called the meeting to order and asked members to introduce themselves. Representative Hoffman introduced Bob Felix, Property Manager of Brookville Memorial State Park, and Kent Reineking, owner of Kent's Marina. Kent's Marina is a public-private partnership.

**Out-of-State Boater Registration Process.** Mr. Reineking explained that if a boater keeps a boat on the water for more than 60 days, the boat must be titled and registered in Indiana. Some out-of-state lenders do not like to give up the title so that the owner can register the boat in Indiana. He recommends allowing people to pay the excise tax and receive a sticker without having to title and register the boat in Indiana. The Bureau of Motor Vehicles (BMV) does not seem to be consistent in what they require from out-of-state boaters. Currently, boaters on private lakes pay the excise tax but do not pay title and registration fees.

Burgess Brown, DNR legislative liaison, noted that the DNR has met with the BMV and that the BMV is working to set up a system to accept excise taxes from boaters.

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<sup>1</sup> 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.

The NRSC by a roll call vote (6-0) recommended that the title and registration requirement be waived if the out-of-state boater is registered in another state and if the boater pays the excise tax if the boat is continually on the water for 60 days with a small fee to the BMV for processing the excise tax sticker for out-of-state boaters.

**Tillery Hill Recreation Area.** Kyle Hupfer, DNR Director, stated that Tillery Hill Recreation Area, which consists of 1,800 acres, is leased by the DNR from the Army Corps of Engineers and that it is not a state property. (See Exhibit 1 for a map of the property.) The property currently experiences heavy use by hunters and fishers, and that designating the area as a state park would eliminate hunting activity. The area has no campgrounds nor entrance gates.

Senator Young explained that the area has utilities in place and that, in the past, it was intended to be developed. He asked for a resolution to change the status of the area to a state park based on a constituent's request. Jeanne Melchior, Protect Our Woods, noted that, fifteen years ago, citizens from all over the state opposed development of the area.

Senator Weatherwax noted that hunters are losing areas in which to hunt and that Tillery is one of the few places left for hunters. He recommended that the Committee make no recommendation. Representative Pond seconded his recommendation.

**Residential Construction in Floodways.** George Bowman, DNR Assistant Director of the Division of Water, provided an overview of the Flood Control Act (FCA) (See Exhibit 2). The FCA was passed in 1945. In 1913 Indiana experienced its worst flooding with extensive flooding occurring again in 1943. Generally, no residences are allowed in floodways. Amendments to the FCA allowed for the placement, reconstruction, and improvement of residences in certain circumstances. An abode damaged by floodwaters (except in the Ohio River floodway) may not be restored to its pre-damaged condition if the damage is determined to be substantial or constitute reconstruction. In 2005 hundreds of homes that were located in a floodway were substantially damaged. Substantial damage occurs when the cost of repairs is greater than 50% of the original cost of the structure.

Director Hupfer asked that legislators examine the law and ratify it. He asked that legislators determine if current exceptions and rules are the will of the General Assembly. Local communities need to enforce building requirements that allow people to get permits to build in floodways.

Senator Young stated that residences along the Ohio River are an exception because the Ohio River does not flash flood. However, people can not obtain flood insurance, so they build the property at their own risk and expense.

Director Hupfer stated that the DNR is not enforcing the prohibition on rebuilding in a floodway based on precedent, but that DNR will now enforce the law. The legislature must decide whether to change it.

Senator Young indicated that he assumed that laws that were passed were enforced.

Director Hupfer mentioned that the Wabash River flooded over 400 homes that were in the floodway and were substantially damaged. In 2003, 573 residents requested buy-outs. The DNR determined that only 189 were substantially damaged. Only \$2 M was available to buy the homes, which allowed for the acquisition of around 25 residences. Construction in the floodway could affect flood insurance. He encouraged local communities to enforce the law and not allow new construction in floodways. Approximately 10-12% of homes in the floodway have insurance. If it is the legislature's will that residences not be reconstructed, then that is

what the DNR will enforce. The DNR has an obligation to enforce the law.

Senator Weatherwax noted that reconstruction of flood-damaged homes costs everyone. Developers who construct in floodways should be liable.

Senator Lewis indicated that when Utica was flooded in 1997, the town was moved to higher ground. Some people would have rebuilt in the same location if they had not been forced to move.

Representative Hoffman mentioned that in some cases, counties issue permits to rebuild that the state would not have allowed. People rebuild before the state becomes aware of the reconstruction.

**The Committee voted 6-0 to table discussion of the topic. Members encouraged the DNR to conduct public meetings around the state with insurance companies, taxpayers, affected neighborhoods, etc., to educate communities and to report back to the legislature.**

**Laurel Feeder Dam.** Senator Robert Jackman stated that he was not asking the Committee for legislation pertaining to the Laurel Feeder Dam. He, however, did want to express his frustration about the lack of information regarding how the \$1.7 M that was appropriated to the DNR for the dam is going to be used. In 1836, the state began the Whitewater Canal. The state went bankrupt in 1840. Now there are only seven miles of the canal left. It is the only aqua-fed canal in the state. The canal has become overgrown and filled with silt. He and local interested parties would like for DNR staff to meet with them in Franklin County to discuss plans for the use of the appropriation. He is frustrated about the lack of information from the DNR relative to how the project will be completed. The appropriation was made in June or July and he has tried to get the DNR to come to the canal. In the 1960s, races were conducted on the canal, and the canal generated tourism. Senator Jackman noted that the DNR has recommended three phases to the project with a total of \$3.7 M in expenditures.

Representative Hoffman stated that the canal was a unique site, and that he, Representative Bischoff, and Senator Nugent have written letters on behalf of the project.

Director Hupfer stated that he did not have a problem meeting with Senator Jackman and the people of the community. The DNR had sent a letter dated September 7<sup>th</sup> pertaining to the canal. The canal has been a state historic site since 1946. Most of the canal is located on state land.

**Norman Klosman**, Franklin County Soil and Water Conservation District (SWCD), stated that in the fall of 2004, at a meeting of the state SWCDs, that he became aware of an article in a newspaper that indicated that the DNR planned to put in wells to allow enough water to be able to float boats in the canal. He would like to have a face-to-face meeting with the DNR to discuss what the DNR plans to do with the appropriation for the canal. The local community would like to have some input. He is concerned about how the DNR will address the erosion issue. The SWCD has revenue for projects, such as filter strips, and the revenue can be used to generate federal dollars, but the district needs to be involved. His goal is to make the best project at the lowest price. Mr. Klosman indicated that he had sent a letter to the DNR in March.

Representative Hoffman stated that he appreciated that funding was available and that a train trip to the area had been scheduled for people involved in the letter-writing campaign.

**Forestry Issues.** Ray Moistner, Executive Director, Indiana Hardwood Lumbermen's Association, supported a DNR proposal to merge the Classified Forest with the Classified Wildlife Habitat programs. Currently, the Division of Forest and the Division of Fish and Wildlife administer the program. He proposed having the Division of Forestry administer both programs. He also supported an increase in penalties.

He also supported revising reclamation laws to allow the classification of suitably reclaimed strip mine lands. (See Exhibits 3 and 4.)

**Dan Ernst, DNR Assistant State Forester**, wanted to make entry into the Classified Forest program easier, suggesting that the Natural Resources Commission could establish the means by which acreage could be added. Currently, strip mine lands are not eligible. He would like for these lands to be eligible for the Classified Forest Program.

He also indicated that the definition of mercantile timber is 14 inches in diameter at chest height. He would like to see this definition changed to allow for smaller trees. The industry is now trying to get around the definition.

Senator Young made a motion that the definition of "mercantile timber" which is yet to be worked out be amended and be part of the Committee's recommendation. The Committee voted to include in their final report a recommendation to support amending the definition of "mercantile timber".

**Lynn Dennis, The Nature Conservancy**, explained that TNC elects to continue to pay taxes on land that they own that is otherwise exempt.

**Senator Lewis recommended that a bill be drafted to address the issue. The Committee voted 6-0 to recommend in the final report the drafting of legislation in support of the concept for individual committee members to carry.**

**Cowboy Guns.** Director Hupfer indicated that any changes that needed to be made to allow for the use of "cowboy guns" when hunting could be made through the NRC. The NRC has not looked at the merits of the concept, but will consider the issue after the hunting season.

**Youth Free-Hunting Day.** Director Hupfer proposed statutory language that would allow not more than four days each year as free hunting days for youth. The days must be consecutive. No hunter education would be required. (See Exhibit 5.)

**Deer License Options.** Director Hupfer proposed statutory language that would encourage hunters to kill does and not just bucks. (See Exhibit 6.)

**The Committee voted 6-0 to support concepts offered by the DNR relative to Free-Hunting days for youth and changes to the deer license options offered by Director Hupfer, and to encourage individual members to prepare legislation.**

**Taxable Marinas.** Tom Conley, Administrator, Department of Revenue (DOR), provided an overview of the marina tax that is paid on gasoline sold at marinas on Indiana lakes and reservoirs. No special fuel tax is involved. Distributors pay the tax to the DOR. Distributors report monthly a breakdown of exempt and non-exempt marine fuel sales. During the 2005 summer, the DOR surveyed gasoline distributors. Some distributors were not accurately reporting sales. Accurate reporting in the future should eliminate inappropriate distributions of the revenue. Distributors needed some education relative to the appropriate recording and

reporting. Mr. Conley offered to review revenue collections for the tax. He explained that marinas on Lake Michigan and the Ohio River are excluded from collecting the tax.

Ms. Brown stated that she would contact other states to see if they collect the tax.

Senator Lewis recommended that the Committee support the concept in the final report.

**The Committee voted 6-0 to support SB 519-2005 as introduced with changes as might be needed after information from other states is received and with changes that might be needed to ensure that the language results in a shift in revenue and does not generate new revenue.**

**Non-consumptive User Fees.** Director Hupfer asked that the issue be tabled pending further study by the DNR.

**Seawalls.** Jim Ray, Director, DNR Lake & River Enhancement Program, described statutory changes proposed by the Lake Management Work Group. (See Exhibit 7.) He explained that shorelines need to be protected because as much as 90% of living organisms in the lake are found along the shorelines. At the shoreline, plants prevent eroded soil and nutrients from entering the water. Aquatic plants provide oxygen, food, and habitat, and they out-compete nuisance algae. Much new construction near the shoreline and the construction of seawalls removes significant portions of natural vegetation. Destruction of the natural shoreline reduces water clarity. The Work Group proposed statutory changes. (See Exhibit 8.)

**The Committee voted 6-0, by roll call vote, to recommend PD 3476-04 with any needed technical changes.**

**Bob Felix, Property Manager,** provided an overview of Brookville Lake.

**Nancy Kinder, Director of the Eastern Indiana Regional Economic Development District,** introduced members of the Union and Franklin Counties economic development organizations.

**Recess.** Representative Hoffman recessed the meeting at approximately 5:15 p.m.

**Reconvene.** Representative Hoffman reconvened the meeting at approximately 10:00 a.m. on Wednesday, October 5. The Committee focused on proposed legislation for the 2006 legislative session.

### **Proposed Legislation**

**PD 3152:** The bill establishes a single advisory council to serve the Bureau of Water and Resource Regulation and the Bureau of Lands and Cultural Resources. (Current law creates a separate advisory council for each bureau.) The bill removes per diem for advisory council members. The bill also requires the advisory council to meet at least once every two months (rather than quarterly).

The Committee voted 6-0, by roll call vote, to recommend the proposal and to include the recommendation in the final report.

**PD 3151:** This bill allows the DNR director, with the approval of the Budget Agency and review of the Budget Committee, to use money in the Lifetime Hunting, Fishing, and Trapping License

Trust Fund to acquire property to be used for hunting and fishing. The bill makes an appropriation.

The Committee voted 6-0 to support the concept of the proposed draft in the final report. It was suggested that additional language be added to the proposal that would provide additional oversight relative to fund expenditures and that would limit expenditures to 50% of the value of the land that is to be purchased.

### **Approval of the Final Report**

The Committee voted 6-0, by roll call vote, to adopt the final report.

**Adjournment.** The Chair adjourned the Committee at approximately 11:55 a.m.