

**FINAL REPORT
OF THE
NATURAL RESOURCES
STUDY COMMISSION**



**Indiana Legislative Services Agency
200 W. Washington St., Suite 301
Indianapolis, Indiana 46204-2789**

November 2005

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Natural Resources Study Committee

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November 1, 2005

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.state.in.us/legislative/>.

FINAL REPORT

Natural Resources Study Committee

I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES

IC 2-5-5-1 established the Natural Resources Study Committee. IC 2-5-5-3 directs the Committee to study laws relating to the Department of Natural Resources (DNR) to the end that legislation may be proposed to better serve the citizens of Indiana. The Committee is to consult with representatives of the DNR and citizens of Indiana for the purpose of proposing legislation to accomplish the following:

- (1) repeal of outmoded or unnecessary laws;
- (2) consolidation and restatement of existing laws;
- (3) improved coordination of state laws with federal laws; and
- (4) addition or amendment of laws that will further the purpose for which the DNR was created. (IC 2-5-5-3).

The Committee is to advise and assist the DNR in programming its activities and in developing a long-range plan for

- (1) land acquisition;
- (2) capital improvement;
- (3) development of facilities.

IC 14-25-7 directs the Committee to oversee the Water Resource Management Program under IC 14-25-7-16.

II. INTRODUCTION AND REASONS FOR STUDY

The Natural Resources Study Committee met to carry out its statutory responsibilities under IC 2-5-5-3.2 and IC 14-25-7-16.

III. SUMMARY OF WORK PROGRAM

The Committee met five times during the 2005 interim. Meetings were held as follows:

- (1) August 22, Fort Harrison State Park, Lawrence;
- (2) September 12, Pokagon State Park, Angola;
- (3) September 13, Pokagon State Park, Angola;
- (4) October 4, Brookville Reservoir, Liberty; and
- (5) October 5, Brookville Reservoir, Liberty.

IV. SUMMARY OF TESTIMONY

The Committee heard testimony from DNR professionals, members of the General Assembly, representatives of various associations, private citizens, and other interested parties. An overview of the testimony is presented below.

Elimination of Two Advisory Councils under the Natural Resources Commission (NRC). The Director of DNR, Kyle Hupfer, proposed the elimination of the advisory councils created for the Bureau of Water and Resource Regulation and the Bureau of

Land and Cultural Resources. He stated that the chairs of the advisory councils are members of the NRC. He proposed replacing the chairs with one Republican and one Democrat who would be appointed by the Governor. He stated that there are other advisory councils that can serve the same functions and that the formality of the advisory councils was not needed.

With respect to the elimination of two advisory councils, Ray McCormick, chair of one of the advisory councils, noted that the councils had been valuable in the past. Dick Mercier, Indiana Sportsmen's Roundtable, disagreed with the proposed abolishment of the advisory councils, citing the past work of the councils and the opportunity for public input provided by the councils. He suggested that the advisory councils be combined and downsized to 12 members. Phil Ohmit, Hoosier Conservation Alliance, noted that the councils have provided valuable input to the DNR for many years. Lynn Dennis, The Nature Conservancy (TNC), stated that TNC has a staff person who serves on a council and that TNC would like to see a mechanism that provides experts with an opportunity to offer advice. Jack Corpuz, Pheasants Forever, suggested that the councils be combined and reduced in size, noting that the councils have joint meetings. Karen Griggs, advisory council member, noted that the expertise of many people is needed.

Non-Consumptive User Fees. Director Hupfer stated that Indiana is a user fee-based state. He noted that there is an "upward trend of non-consumptive users in our fish and wildlife areas and state forests" and that other states and entities are starting to implement user fees. (Non-consumptive users include bird-watchers, hikers, etc.) However, Director Hupfer asked that the issue be tabled pending further study by the DNR. The Committee voted 6-0 by a roll call vote to table the topic.

Seawalls. Jim Ray, Director, DNR Lake & River Enhancement Program, described statutory changes proposed by the Lake Management Work Group. 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. 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. Jim Hebenstreit indicated that the DNR had rules to limit materials used in seawalls, but owners try to circumvent the law by building walls in the shoreline. Dick Swennunson noted that fish spawn in front of glacial stone seawalls, but not in front of cement seawalls.

Lifetime License Fund. Director Hupfer proposed amending language pertaining to the use of the Lifetime License Fund. IC 14-22-4-6 specifies that each year all accumulated earnings plus 2.5% of the fund is transferred to the DNR. Currently, this revenue is used to maintain the automated point-of-sale system. As of August 15, 2002, the balance in the fund was \$8.6 M. The fund must be used for fish and wildlife. He would like to be able to use revenue in the fund for acquiring land for public hunting

and fishing access. Use of the fund would be contingent on approval of the Office of Management and Budget and the Budget Committee. Every \$1 of the Lifetime License Fund money could be used to leverage \$3 to \$4 dollars from other sources, such as the Heritage Trust Fund. Glenn Salmon, DNR Fish and Wildlife, stated that \$400,000 of money from the fund was annually used to finance the point-of-sale system for a five-year period.

Deer License Options. Director Hupfer explained the Department of Correction (DOC) venison program wherein hunters can donate deer killed to the DOC. The DNR plans to issue bonus permits during the archery season and to expand limits on the killing of antlerless deer. The DNR would like to expand hunting opportunities by expanding opportunities for non-resident muzzle loading, shotgun, and archery hunters. He proposed including the killing of one buck and one doe in a non-resident hunting license. The current fee for this license is \$120.75 for one deer. Illinois charges a fee of \$200 with a \$25 fee for an antlerless deer. Ohio charges a fee of \$150. Kentucky charges \$165 with a \$12.50 fee for an antlerless deer. Michigan charges \$138.

He also proposed changing the statutory minimum for resident and non-resident doe licenses. The current resident minimum is \$13.50 with the current non-resident minimum at \$120.75. He proposed decreasing these fees by \$5.00 and \$10.00, respectively.

Youth Free-Hunting Day. Rep. Hoffman suggested suspending for a weekend license requirements for taking a kid hunting for small game. The hunter education requirement would also be suspended. An adult with a hunting license would have to be present. Mr. Corpuz asked the Committee to consider youth hunting seasons, noting that the sale of hunting licenses has dropped 31% from 1983 to 2005. 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.

Cowboy Guns. Sen. Waterman suggested a hunting season for "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.

Taxable Marinas. Tom Conley, Administrator, Department of State Revenue (DOR), provided an overview of the marina tax that is paid on gas 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 gas 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.

Burgess Brown, DNR legislative liaison, stated that she would contact other states to

see if they collect the tax.

Out-of-State Boat Registrations. Major Sam Purvis, Boating Law Administrator, DNR Law Enforcement, 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. 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. Collecting the tax has been a problem in the past.

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 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. Ms. 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.

Use of Forests. Ray Moistner, Indiana Hardwood Lumbermen's Association, indicated that he would like the Committee to consider issues surrounding the use of forests.

Lake Patrol Grants. Major Purvis provided a summary of activities pertaining to lake patrol grants. Three counties are currently participating. The amount of the grant per county was \$35,000. Three additional counties have expressed an interest in participating. 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.

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.

Channeling and Funneling. Nat Noland, property owner and Legal Committee Chair for the Glen Eyre Association, provided the Committee with a statement of his views regarding the management of future developments on lakes. Jim Hebenstreit, DNR Division of Water, discussed channeling and funneling and the definition of a "group pier" as defined in rule. He stated that DNR needs to develop criteria for piers. DNR was given jurisdiction over the lawful non-conforming use of piers in 2000. The NRC has adopted a rule that would allow the DNR to shorten existing long 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. The DNR has looked at what other states are doing to address 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. Coleen Boyd, Hamilton Lake, agreed. 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 the channeling problem 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 court of appeals cases 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. Jack Dold, LaGrange County Lakes Council, stated that 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 seeing it as a way to make sales. Rep. Pond stated that she would like to see the DNR develop rules to govern these situations.

Elimination of Septic Tanks and Cesspools Around Lakes. Sandra Plum, Indiana Department of Environmental Management (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.

Wabash River Heritage Corridor Commission. Ron James, Wabash River Heritage Corridor Commission Executive Director, explained that Indiana's resources are its waters. The Wabash River is 490 miles of flow. It is the longest free-flowing river east of the Mississippi. The Wabash touches 27 counties. He explained that at rest stops and information centers brochures pertaining to the Corridor are second in popularity only to the state map. He noted that 59 river projects were awarded \$7.9 M in grants,

with \$13.4 M spent from all sources. Volunteers and counties maintain the improvements. The only dam on the river is at Huntington, which is 450 miles from the Kentucky state line.

Elevation of Tillery Hill State Recreation Area to the Status of a State Park. The Legislative Council charged the Committee with studying the elevation of Tillery Hill State Recreation Area to the status of a state park (SR 61-2005). Director Hupfer indicated that changing Tillery Hill from a recreational area to a state park will limit the use of the land.

He noted that the area, which consists of 1,800 acres, is leased by the DNR from the U.S. Army Corps of Engineers and that it is not a state 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. Sen. 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. Sen. 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. Rep. 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), which 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 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.

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

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

Rep. 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.

Laurel Feeder Dam. Sen. 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 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.

Director Hupfer stated that he did not have a problem meeting with Sen. Jackman and the people of the community.

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.

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.

Dan Ernst, DNR Assistant State Forester, wanted to make entry into the program easier, suggesting that the NRC could establish the means by which acreage could be added. 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.

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 amended the PD to carry over 8 current members rather than 12.

The Committee voted 6-0, by roll call vote, to recommend the proposal as amended 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.

V. COMMITTEE RECOMMENDATIONS

The Committee made the following recommendations:

Out-of-State Boater Registration Process. The NRSC voted 6-0 by voice vote to recommend the concept 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.

Youth Free-Hunting Days and Changes to the Deer License Options. 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. 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.

Lake Preservation. The Committee voted 6-0 to support PD 3476-2005 as amended, which requires that a person who performs certain activities concerning water levels, shorelines, and lake beds along a lake or within ten feet of a lake obtain a permit from the DNR. It directs the NRC to adopt rules and make conforming changes. It also repeals laws concerning permits to change water levels, shorelines, and lake beds.

Residential Construction in Floodways. 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.

Forestry Issues. The Committee voted 6-0 to recommend the drafting of legislation, for individual Committee members to carry, in support of the concept of merging the Classified Forest with the Classified Wildlife Habitat programs; amending the definition of "mercantile timber"; increasing penalties for withdrawing from the classified programs; and allowing the classification of suitably reclaimed strip mine lands.

Non-Consumptive User Fees. At the request of Director Hupfer, the Committee voted by roll call vote of 6-0 to table the issue of non-consumptive user fees.

Approval of the Final Report

The Committee voted 6-0 to adopt the final report.

WITNESS LIST

George Bowman, Assistant Director, DNR Division of Water
Ted Bowman, Pokagon State Park Property Manager
Coleen Boyd, Hamilton Lake
Burgess Brown, DNR Legislative Liaison
Tom Conley, Administrator, DOR
Jack Corpuz, Pheasants Forever
Lynn Dennis, The Nature Conservancy
Jack Dold, LaGrange County Lakes Council
Gary Doxtater, Citizen and Former Director of the DNR Division of Fish and Wildlife
Dan Ernst, DNR Assistant State Forester
Bob Felix, Property Manager, Brookville Memorial State Park
Karen Griggs, NRC Advisory Council
Jim Hebenstreit, Deputy Director, DNR Division of Water
Kyle Hupfer, DNR Director
The Honorable Robert Jackman, Indiana State Senate
Ron James, Wabash River Heritage Corridor Commission Executive Director
Nancy Kinder, Director, Eastern Indiana Regional Economic Development District
Norman Klosman, Franklin County Soil and Water Conservation District
Niann Lautzenhiser, Hamilton Lake
Carol Mattix, Hamilton Lake Sentinels
Ray McCormick, Chair, NRC Advisory Council
Jeanne Melchior, Protect Our Woods
Dick Mercier, Indiana Sportsmen's Roundtable
Michelle Milligan, State Department of Health
Ray Moistner, Indiana Hardwood Lumbermen's Association
Nat Noland, Property Owner and Legal Committee Chair, Glen Eyre Association
Phil Ohmit, Hoosier Conservation Alliance
Sandra Plum, Indiana Department of Environmental Management
George Pond, Citizen
Major Sam Purvis, Boating Law Administrator, DNR Law Enforcement
Jim Ray, Director, DNR Lake & River Enhancement Program
Kent Reineking, Kent's Marina
Glenn Salmon, DNR Fish and Wildlife
Bill Schmidt, Lake James
Dick Swennunson, Lake Maxinkuckee Association
Ralph Taylor, Citizen, Steuben County, and Former DNR Officer
Jodie Weldy, Trail Riders Association