January 29, 1998

HOUSE BILL No. 1338

DIGEST OF HB 1338 (Updated January 28, 1998 11:40 am - DI 69)

Citations Affected: IC 13-11-2; IC 13-20.

Synopsis: Waste tires. Requires a person to obtain a certificate of registration from the department of environmental management before creating or maintaining a waste tire processing operation at which tires are cut or shredded. Specifies that, for purposes of the law concerning waste tire storage sites and disposal of waste tires, a waste tire storage site is: (1) a site at which at least 1,000 waste tires are accumulated outdoors or within a structure that is not completely enclosed; or (2) a site at which at least 2,000 waste tires are accumulated indoors within a completely enclosed structure. Specifies that the waste tire storage site and waste tire processing operation registration requirements do not apply to: (1) a vehicle or container in which waste tires are stored for less than 30 days; (2) a completely enclosed and properly licensed vehicle containing waste tires; and (3) a site that is used to retread tires and at which fewer than 5,000 waste tires are present indoors within a

(Continued next page)

Effective: July 1, 1998.

Moses, Wolkins

January 13, 1998, read first time and referred to Committee on Environmental Affairs.
January 28, 1998, reported — Do Pass.

C o p y

Digest Continued

completely enclosed structure. Requires a person who stores any number of waste tires to do so in a manner that does not pose a threat to human health or the environment, does not pose a fire hazard, and controls vectors that pose a threat to human health. Allows the commissioner of the department to revoke or modify the registration of a waste tire storage site, waste tire processing operation, or waste tire transporter for specified reasons. Requires a person who wishes to obtain a waste tire transporter certificate of registration to maintain evidence of financial assurance in the amount of at least $10,000. Repeals the July 1, 2000, expiration date of the law regulating waste tire storage sites and the waste tire management fund. Makes other changes to the law concerning waste tires.

C o p y

January 29, 1998

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

C o p y

HOUSE BILL No. 1338

A BILL FOR AN ACT to amend the Indiana Code concerning the environment.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 13-11-2-67, AS ADDED BY P.L.1-1996, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 67. **(a) "Enforcement action", for purposes of IC 13-20-13 and IC 13-20-14, means:**

(1) a written notice of a violation or a commissioner's order issued under IC 13-30-3;

(2) a letter identifying a violation; or

(3) a court proceeding initiated by the:

(A) department;

(B) department of fire and building services;

(C) state; or

(D) federal government;

under an environmental protection law or other law concerning public health, safety, or the environment.

(b) "Enforcement action", for purposes of IC 13-25-5, means:

(1) a written notice of violation issued under IC 13-30-3-3, IC 13-30-3-4, or IC 13-7-11-2 (before its repeal) that requires or involves the removal or remediation of petroleum or a hazardous substance;

(2) another written notice that requires the removal or remediation of petroleum or a hazardous substance and that is:

(A) issued under:

(i) IC 4-21.5-3-6;

(ii) IC 4-21.5-3-8; or

(iii) IC 4-21.5-4; or

(B) substantially equivalent to a special notice letter issued under 42 U.S.C. 9622(e); or

(3) a similar notice issued by the federal government.

SECTION 2. IC 13-11-2-250.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 250.5. "Waste tire processing operation", for purposes of IC 13-20-13, means an operation that processes waste tires by cutting or shredding. The term does not include a retail operation that cuts or shreds waste tires generated by the retail operation.**

SECTION 3. IC 13-11-2-251, AS ADDED BY P.L.1-1996, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 251. "Waste tire storage site", for purposes of IC 13-20-13 and IC 13-20-14, means:

(1) a site at which at least ~~five hundred (500)~~ **one thousand (1,000)** waste tires ~~(1)~~ are accumulated ~~in the~~ outdoors ~~at a single location; and~~ **or within a structure that is not completely enclosed; or**

(2) ~~are not completely enclosed within a structure or vehicle.~~ **a site at which at least two thousand (2,000) waste tires are accumulated indoors within a completely enclosed structure.**

SECTION 4. IC 13-20-13-1, AS ADDED BY P.L.1-1996, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. The provisions of this chapter concerning waste tire storage site **and waste tire processing operation** certificates of registration do not apply to the following:

(1) A facility operated as a recycling facility under a valid permit issued by the commissioner.

(2) A site at which waste tires are stored under a recycling program approved by the commissioner.

~~(3) A site:~~

~~(A) that is operated by a person that supplies tires to a~~

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~~recycling program; and~~

~~(B) at which fewer than one thousand (1,000) waste tires are present.~~

~~(4) A site:~~

~~(A) that is used for the retail sale of tires; and~~

~~(B) at which fewer than one thousand (1,000) waste tires are present.~~

~~(5) The site of a business that removes tires from vehicles at which fewer than one thousand (1,000) waste tires are present.~~

~~(6)~~ **(3)** The site of a facility that is used to retread tires at which fewer than ~~one thousand (1,000) waste tires are present.~~ **five thousand (5,000) waste tires are present indoors within a completely enclosed structure.**

(4) A vehicle or container in which waste tires are stored for less than thirty (30) days.

(5) A vehicle that is properly licensed, capable of legally transporting waste tires, and in which waste tires are completely enclosed.

SECTION 5. IC 13-20-13-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 1.5. A person that stores waste tires shall do so in a manner that:**

(1) does not pose a threat to human health or the environment;

(2) does not pose a fire hazard; and

(3) controls vectors that pose a threat to human health.

SECTION 6. IC 13-20-13-2, AS ADDED BY P.L.1-1996, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. A person may not **create or** maintain a waste tire storage site **or waste tire processing operation** unless the person:

(1) has registered the waste tire storage site **or waste tire processing operation** under this chapter or IC 13-7-23 (before its repeal); and

(2) holds a valid certificate of registration issued under section 3 of this chapter or IC 13-7-23-7 (before its repeal).

SECTION 7. IC 13-20-13-3, AS ADDED BY P.L.1-1996, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3. (a) The commissioner shall issue a waste tire storage **site or waste tire processing operation** certificate of registration to a person that owns or operates a waste tire storage site **or waste tire processing operation** if

~~(1)~~ the person complies with the requirements of this chapter and

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~~(2) the commissioner determines that it is not economically feasible to recycle or reuse the waste tires stored by the person.~~ **rules adopted by the board under section 11 of this chapter.**

(b) A certificate of registration issued under this section expires five (5) years after the date the certificate is issued.

(c) The commissioner may include in a certificate of registration issued under this section conditions that ensure compliance with:

(1) this chapter; and

(2) rules adopted by the board under this chapter;

including a compliance schedule.

(d) The department may deny an application for a certificate of registration under this chapter if:

(1) the application is incomplete;

(2) the applicant has failed to comply with the requirements of:

(A) this chapter;

(B) IC 13-20-14; or

(C) a rule adopted by the board under section 11 of this chapter or under IC 13-20-14-6; or

(3) an enforcement action is pending against the applicant.

SECTION 8. IC 13-20-13-4, AS ADDED BY P.L.1-1996, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. (a) To ~~receive~~ **apply for** a certificate of registration under section 3 of this chapter, a person must submit the following to the department:

(1) A description of the location of the:

(A) waste tire storage site; **or**

(B) waste tire processing operation.

(2) A description of ~~the~~ buildings, signs, notices, and alarms to be used:

(A) on the **waste tire storage** site; **or**

(B) in connection with the waste tire processing operation.

(3) A description of the management program for the **waste tire storage** site **or waste tire processing operation,** including emergency measures to be used on the site **or at the operation.**

(4) If a person is to operate a waste tire storage site, a description of evidence of financial assurance to be maintained by the person under rules adopted by the board under section 11 of this chapter.

~~(4)~~ **(5)** A fee in an amount determined by the board.

~~(5)~~ **(6)** Other information reasonably requested by the department.

(b) The department shall deposit the fee submitted under subsection

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(a)(4) in the waste tire management fund established by this chapter.

SECTION 9. IC 13-20-13-5, AS ADDED BY P.L.1-1996, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. A person that obtains a certificate of registration under section 3 of this chapter must do the following:

(1) Report annually to the department on the following:

(A) The number of waste tires received at the **waste tire** storage site **or by the waste tire processing operation.**

(B) The number and manner of disposal of the waste tires.

(2) Maintain contingency plans to protect public health and the environment.

(3) If the person operates a waste tire storage site, ~~that stores at least one thousand (1,000):~~

~~(A) whole waste tires; or~~

~~(B) waste tires in pieces;~~

maintain financial assurance acceptable to the department necessary for waste tire removal, ~~fire suppression, and other measures necessary to protect public health and the environment~~ **in an amount specified in rules adopted by the board under section 11(b)(3) of this chapter.**

(4) Maintain a copy of the certificate of registration at the site.

(5) Comply with applicable rules and requirements established by the fire prevention and building safety commission for indoor waste tire storage sites.

(6) Retain a copy of manifests received from a waste tire transporter under IC 13-20-14 for at least one (1) year and make a copy of the manifests available to the department upon request.

SECTION 10. IC 13-20-13-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 5.5. (a) A certificate of registration issued by the department under this chapter may be revoked or modified by the commissioner, or by a designated staff member of the department, after notification in writing is sent by certified mail to the holder of the certificate for:**

(1) failure to disclose all relevant facts, or a misrepresentation made in obtaining the registration; or

(2) failure to correct, within the time established by the department:

(A) a violation of a condition of the registration; or

(B) a violation of this chapter or a rule adopted by the board under section 11 of this chapter.

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(b) A person aggrieved by the revocation or modification of a certificate of registration may appeal the revocation or modification to the office of environmental adjudication under IC 4-21.5-7. Pending the decision resulting from a hearing under IC 4-21.5-3 concerning the revocation or modification, the registration remains in force. However, subsequent to revocation or modification, the commissioner may seek injunctive relief concerning the activity described in the registration.

SECTION 11. IC 13-20-13-6, AS ADDED BY P.L.1-1996, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 6. (a) The department shall operate a waste tire storage site **and waste tire processing operation** inspection program.

(b) A person that obtains a certificate of registration under section 3 of this chapter must allow the department access to the **waste tire** storage site **or waste tire processing operation** at reasonable times to inspect for potential violations of:

(1) this chapter; or

(2) rules adopted under this chapter.

SECTION 12. IC 13-20-13-8, AS ADDED BY P.L.1-1996, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 8. (a) Except as provided in subsection (d)(3) and (d)(6), the waste tire management fund is established for the following purposes:

(1) Thirty-five percent (35%) of the money deposited in the fund each year shall be used to assist the department:

(A) in the removal and disposal of waste tires from sites where the waste tires have been disposed of improperly;

(B) in operating the waste tire education program under section 15 of this chapter; and

(C) to pay the expenses of administering the programs described in clause (B). ~~and subdivision (2).~~

(2) Sixty-five percent (65%) of the money deposited in the fund each year shall be used to assist the department of commerce:

(A) in providing grants and loans to persons involved in waste tire management activities under section 9 of this chapter; **and**

(B) to pay the expenses of administering the programs described in clause (A).

(b) The expenses of administering the fund shall be paid from money in the fund.

(c) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(d) Sources of money for the fund are the following:

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(1) Fees paid under section 4(a)(4) of this chapter and IC 13-20-14-5(e).

(2) Fees collected under section 7 of this chapter.

(3) Costs and damages recovered from a person under section 14 of this chapter or IC 13-20-14-8. All money deposited in the fund under this subdivision may be used by the department for removal and remediation projects.

(4) Fees established by the general assembly for the purposes of this chapter.

(5) Appropriations made by the general assembly.

(6) Gifts and donations intended for deposit in the fund. A gift or donation deposited in the fund under this subdivision may be specified to be entirely for the use of the department or the department of commerce.

(7) Civil penalties collected under IC 13-30-4 for violations of:

(A) this chapter;

(B) IC 13-20-14; and

(C) rules adopted under section 11 of this chapter and IC 13-20-14-6.

All money deposited in the fund under this subdivision may be used by the department for waste tire removal and remediation projects.

SECTION 13. IC 13-20-13-11, AS ADDED BY P.L.1-1996, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 11. (a) The board shall adopt rules under IC 4-22-2 and IC 13-14-8 necessary to implement this chapter.

(b) The rules adopted under this section must include the following:

(1) Requirements for the registration of waste tire storage sites **and waste tire processing operations.**

(2) Requirements concerning the following:

(A) The operation of waste tire storage sites **and waste tire processing operations.**

(B) Proper storage **and processing** of waste tires.

(C) Contingency plans concerning the minimization of hazards to human health and the environment at waste tire storage sites **and waste tire processing operations.**

(D) Record keeping guidelines concerning the quantity of waste tires stored and processed at waste tire storage sites **and waste tire processing operations.**

(3) ~~The amount of financial assurance a waste tire storage site that stores at least one thousand (1,000):~~

~~(A) whole waste tires; or~~

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~~(B) waste tires in pieces;~~

~~must maintain.~~ **Financial assurance acceptable to the department necessary for waste tire removal that a person that operates a waste tire storage site must maintain.**

(4) The establishment of the fee required by section 4(a)(4) of this chapter in an amount necessary to cover the costs incurred in the following:

(A) Registering waste tire storage sites **and waste tire processing operations** under this chapter.

(B) Administering this chapter.

SECTION 14. IC 13-20-14-4, AS ADDED BY P.L.1-1996, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. (a) A ~~retailer~~ **source of waste tires** shall dispose of waste tires in the ~~retailer's~~ **source's** possession by one (1) or more of the following means:

(1) Delivery to a wholesaler or to an agent of a wholesaler.

(2) Delivery to a manufacturer of tires.

(3) Delivery to a facility that:

(A) recycles tires; or

(B) collects tires for delivery to a recycling facility.

(4) Delivery to a permitted final disposal facility regulated under environmental management laws.

(5) Delivery to a waste tire storage site.

(6) Delivery to a facility operated as a waste tire cutting facility under a permit issued by the commissioner.

(7) Delivery to a registered waste tire transporter or a person who operates a municipal waste collection and transportation vehicle licensed under IC 13-20-4.

(b) A person referred to in subsection (a) is not required to accept waste tires from a ~~retailer.~~ **source of waste tires.**

SECTION 15. IC 13-20-14-5, AS ADDED BY P.L.1-1996, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. (a) This section does not apply to a person who operates a municipal waste collection and transportation vehicle licensed under IC 13-20-4.

(b) A person may not act as a waste tire transporter unless the person is registered with the department as a waste tire transporter. ~~A person who registers with the department as a waste tire transporter shall disclose the following:~~ **To apply for a certificate of registration as a waste tire transporter, a person must submit the following to the department:**

(1) The person's name.

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(2) The address of the person's principal office.

(3) The addresses of any offices maintained by the person in Indiana.

(4) Evidence of financial assurance, maintained in accordance with rules adopted under section 6 of this chapter, in the amount of at least ten thousand dollars ($10,000). The financial assurance must be in the form of:

(A) a bond for performance, executed by a corporate surety licensed to do business in Indiana;

(B) a negotiable certificate of deposit; or

(C) a negotiable letter of credit;

payable to the department and conditional upon faithful performance of the requirements of this chapter and the registration.

(c) The rules adopted under section 6 of this chapter must adopt a manifest form and require a waste tire transporter to prepare and carry a manifest based upon that form each time a waste tire transporter transports waste tires. The format and wording of the form must require a waste tire transporter to enter information in each manifest indicating the source and number of waste tires to be transported and the destination to which the waste tires are transported.

(d) Until the rules prescribing a manifest form are adopted under subsection (c), a waste tire transporter may use a manifest form designed by the waste tire transporter. A form designed and used under this subsection must meet the format and wording requirements set forth in subsection (c).

(e) A person who acts as a waste tire transporter in Indiana shall pay an annual registration fee of twenty-five dollars ($25) that ~~beginning July 1, 2000,~~ shall be deposited in the ~~state general~~ **waste tire management** fund and appropriated to the department for the department's use in providing for the removal and disposal of waste tires from sites where the waste tires have been disposed of improperly.

(f) A waste tire transporter shall do the following:

(1) Retain a copy of a manifest described under this section for at least one (1) year.

(2) Make a copy of a manifest described under this section available to the department upon request.

(3) Report annually to the department the number of waste tires transported by the waste tire transporter.

(4) Maintain financial assurance acceptable to the department in accordance with subsection (b)(4).

(g) The commissioner may include in a certificate of registration

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issued under this chapter conditions that ensure compliance with:

(1) this chapter; and

(2) rules adopted by the board under this chapter;

including a compliance schedule.

(h) The department may deny an application to register under this chapter if:

(1) the application is incomplete;

(2) the applicant has failed to comply with the requirements of:

(A) this chapter;

(B) IC 13-20-13; or

(C) a rule adopted by the board under section 6 of this chapter or under IC 13-20-13-11; or

(3) an enforcement action is pending against the applicant.

SECTION 16. IC 13-20-14-5.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 5.3. A person that is the source of more than twelve (12) waste tires per year, including tire retailers, auto salvagers, and sellers of used tires, shall:**

(1) retain a copy of manifests received from a waste tire transporter under section 5 of this chapter for at least one (1) year; and

(2) make a copy of the manifests available to the department upon request.

SECTION 17. IC 13-20-14-5.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 5.6. (a) A certificate of registration issued by the department under this chapter may be revoked or modified by the commissioner, or by a designated staff member of the department, after notification in writing is sent by certified mail to the holder of the certificate, for failure to:**

(1) disclose all relevant facts, or a misrepresentation made in obtaining the registration; or

(2) correct, within the time established by the department, a violation of:

(A) a condition of the registration;

(B) this chapter; or

(C) a rule adopted by the board under section 6 of this chapter.

(b) A person aggrieved by the revocation or modification of a certificate of registration may appeal the revocation or modification to the office of environmental adjudication under

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IC 4-21.5-7. Pending the decision resulting from a hearing under IC 4-21.5-3 concerning the revocation or modification, the registration remains in force. However, subsequent to revocation or modification, the commissioner may seek injunctive relief concerning the activity described in the registration.

SECTION 18. IC 13-20-14-7, AS ADDED BY P.L.1-1996, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 7. (a) The commissioner may proceed in court, by appropriate action, to:

(1) compel a person responsible for the improper disposal of waste tires to undertake a removal or remedial action with respect to the waste tires; or

(2) obtain an order to enter upon private or public property to carry out a removal or remedial action with respect to the waste tires if the commissioner cannot identify or locate another person responsible for carrying out the removal or remedial action who:

(A) is willing to carry out the removal or remedial action and is capable of doing so; or

(B) can be compelled to carry out the removal or remedial action under subdivision (1).

(b) The commissioner may issue an administrative order for the purpose set forth in subsection (a)(1).

~~(c) This section expires July 1, 2000.~~

SECTION 19. IC 13-20-14-8, AS ADDED BY P.L.1-1996, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 8. ~~(a)~~ The commissioner may proceed in the appropriate court to recover costs and damages from a person who:

(1) is responsible for the improper disposal of waste tires; and

(2) fails, without sufficient cause, to properly undertake a removal or remedial action upon order of a court under section 7 of this chapter.

~~(b) This section expires July 1, 2000.~~

SECTION 20. IC 13-20-13-16 IS REPEALED [EFFECTIVE JULY 1, 1998].

SECTION 21. [EFFECTIVE JULY 1, 1998] **(a) The solid waste management board shall adopt rules under:**

(1) IC 13-20-13-11, as amended by this act, necessary to implement IC 13-20-13; and

(2) IC 13-20-14-6 necessary to implement IC 13-20-14;

as amended by this act, before July 1, 1999.

(b) The requirement to maintain financial assurance acceptable to the department necessary for waste tire removal under

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IC 13-20-13-5(3), as amended by this act, does not apply to a waste tire:

(1) storage site that stores waste tires indoors within a completely enclosed structure that exists before the effective date of rules adopted under subsection (a); or

(2) processing operation that exists before the effective date of rules adopted under subsection (a);

until the date the rules adopted by the solid waste management board under subsection (a) become effective.

(c) The requirements to:

(1) disclose evidence of financial assurance acceptable to the department under IC 13-20-14-5(b)(4), as added by this act; and

(2) maintain financial assurance acceptable to the department under IC 13-20-14-5(f)(4), as added by this act;

do not apply to a waste tire transporter that exists before the effective date of rules adopted under subsection (a) until the date the rules adopted by the solid waste management board under subsection (a) become effective.

(d) This SECTION expires the earlier of the following:

(1) The date the rules adopted by the solid waste management board under subsection (a) become effective.

(2) July 2, 1999.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred House Bill 1338, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

STURTZ, Chair

Committee Vote: yeas 13, nays 1.

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