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**FISCAL IMPACT STATEMENT**

**LS 6787**

**BILL NUMBER: SB 205**

**NOTE PREPARED: Apr 5, 2007**

**BILL AMENDED: Apr 5, 2007**

**SUBJECT:** Environmental Permits.

**FIRST AUTHOR:** Sen. Gard

**FIRST SPONSOR:** Rep. Dvorak

**BILL STATUS:** CR Adopted - 2<sup>nd</sup> House

**FUNDS AFFECTED:**  **GENERAL**  
 **DEDICATED**  
 **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** *Landfill Permits:* This bill provides that a person must apply for a new permit and meet the requirements of all applicable environmental laws existing at the time the new permit is sought if the person (1) fails to act under an environmental construction permit before the deadline established by statute or rule; or (2) applies for renewal of a permit. The bill provides that the period in which action is required is tolled pending administrative or judicial appeal. It allows the commissioner of the Department of Environmental Management (IDEM) to revoke or modify a construction permit if a person fails to act under the permit before the deadline.

This bill provides that a person that (1) holds a valid solid waste landfill construction permit that authorizes construction for a facility that has not been substantially developed; and (2) has not commenced construction within five years after the date of the permit or another period established by rule or statute; must apply for a new construction permit and meet the requirements of all applicable environmental laws existing at the time the new permit is sought. It provides that a person that (1) holds a valid solid waste landfill construction permit that authorizes construction at an operating facility; and (2) has not commenced construction within five years after the date of the permit or another period established by rule or statute; must meet the requirements of all applicable environmental laws existing at the time construction is substantially commenced.

*Archeology:* The bill redefines "artifact" and changes the date used in determining whether an object or feature is an artifact. It redefines "burial ground" to include certain historic sites. The bill redefines "plan" to include a plan for excavation of ground related to construction. It exempts qualified professional archeologists who conduct phase 1 archeological surveys from certain archeological restrictions. The bill establishes criminal penalties for certain actions that disturb human remains. The bill also requires a person

disturbing ground to use reasonable care and diligence to determine if the ground that may be disturbed is within 100 feet of a cemetery or burial ground. It requires a person who disturbs buried human remains or artifacts to cease disturbing the remains or artifacts and the surrounding area within 100 feet and makes it a Class A infraction to fail to do so. It also includes excavating or covering over the ground a prohibited activity within 100 feet of the limits of a cemetery or burial ground. The bill establishes certain requirements for development plans and archeological plans. It applies certain notice requirements to a person who disturbs burial grounds. It makes reports concerning the location of historical or archeological sites confidential under some circumstances. It allows certain persons to accompany a conservation officer to investigate a violation of historic preservation and archeology law. It also establishes a fund to assist private homeowners who accidentally discover an artifact, a burial object, or human remains and need assistance to comply with an approved archeological or development plan. The bill allows a court to order restitution for certain costs related to the violation of historic preservation and archeology law. It makes it a Class D felony to possess looted property and a Class C felony if the cost of carrying out an archeological investigation on the site that was damaged to obtain the looted property is more than \$100,000. It provides that a disinterment under a plan approved by the department of natural resources is exempt from other disinterment procedures.

*Sales Disclosure:* The bill requires a property owner to identify in a residential real property sales disclosure form any part of the property that was subject to surface mining at any time during the 20 years that immediately precede the closing date.

**Effective Date:** July 1, 2007.

**Explanation of State Expenditures:** (Revised) *Landfill Permits* The proposal is expected to have minimal impact on IDEM. The cost of modifying or renewing a permit is not significantly different than the cost of applying for a new permit to the regulated community. The staff time is approximately the same for situations where the original facility was not constructed. Only 2-3 situations have occurred in recent years where the facility was not constructed within 5 years, but continued to renew the permit.

(Revised) *Archeology: Definition of Artifact.* The bill redefines the definition of artifact which may expand features and objects that would fall under the DNR jurisdiction. However, the DNR should be able to cover any additional costs associated with this provision given its existing level of budget and resources.

*Disturbing Burial Ground.* The bill redefines "burial ground" to include certain historic sites and modifies what constitutes disturbing the grounds. Additionally, the bill modifies requirements that a person who disturbs the ground must do. Failure to do so constitutes a Class A infraction. The bill applies certain notice requirements to a person who disturbs burial grounds. The bill establishes other criminal penalties for certain actions that disturb human remains. These provisions could result in administrative expenses for the DNR; however, the DNR will be able to implement the provisions given its existing resources.

*Confidential Historical or Archeological Sites.* The proposal provides that the DNR Division of Historic Preservation and Archeology may keep reports and information concerning the location of historic and archeological sites confidential under certain conditions. These provisions could increase administrative expenses for the DNR. However, the DNR should be able to cover any additional expense given its existing level of budget and resources.

*Determination of a Violation:* The proposal provides that an employee of the Division of Historic Preservation and Archeology or a person authorized by the DNR may accompany a conservation officer on

public or private property to determine if there is a violation. This provision could increase expenses to the DNR; however, it is presumed that the DNR will be able to cover any additional expense given its existing level of budget and resources or through the reallocation of current resources.

*Program to Assist Homeowners.* Under the proposal, the division may conduct a program to assist private homeowners who have accidentally discovered an artifact, a burial object, or human remains and who need assistance to comply with an approved plan to excavate or secure the site from further disturbance. The provision may increase expenses for the division. However, the bill provides that in conducting a program, the division may receive gifts and grants under terms, obligations, and liabilities that the division director considers appropriate.

*Appropriation.* The Auditor of State must establish the Archeology Preservation Trust Fund for purposes of holding money received for the program to assist homeowners. The division director must administer the fund. Expenses of administering the fund must be paid from money in the fund. The Treasurer of State must invest the money in the Fund that is not currently needed to meet the obligations of the trust fund in the same manner as other public trust funds may be invested. The Treasurer must deposit in the fund the interest that accrues from the investment of the trust fund. Money in the trust fund at the end of a state fiscal year does not revert to the state General Fund. There is annually appropriated to the division the money in the trust fund. The division may adopt rules to govern the administration of the fund program and provisions.

*Penalty Provisions--Restitution.* The bill provides that in addition to a sentence imposed for a felony or misdemeanor; or judgment imposed for an infraction; and an order for restitution to a victim, the court may order an individual to make restitution to the trust fund for the division's cost necessitated because of the offense committed by the individual. The court must forward a copy of an order for restitution to the division.

Certain violators commit a Class D felony or a Class C felony. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. A Class C felony is punishable by a prison term ranging from two to eight years depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$22,734 in FY 2006. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$63,139. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

*Sales Disclosure:* The Indiana Real Estate Commission would need to change its disclosure form. The Professional Licensing Agency provides administrative support for the Commission. The Agency should be able to implement this provision given its existing resources.

**Explanation of State Revenues:** *(Revised) Landfill Permits:* See *Explanation of State Expenditures* above.

*(Revised) Archeology--Penalty Provisions.* The bill establishes a Class A infraction for violating certain duties concerning the unintentional discovery of artifacts. If additional court cases occur and infraction judgments and court fees are collected, revenue to the state General Fund may increase. The maximum judgment for a Class A infraction is \$10,000, which is deposited in the state General Fund. If court actions are filed and a judgment is entered, a court fee of \$70 would be assessed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

The maximum fine for Class C or a Class D felony is \$10,000. The maximum fine for a Class A misdemeanor is \$5,000. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

**Explanation of Local Expenditures:** (Revised) *Archeology*: The proposal could reduce local expenditures to the extent that local units would have access to documentation from the state indicating that a burial ground was or was not within 100 feet of a land disturbance. Local units would not need to make their own determinations.

*Penalty Provisions*: A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44. More alleged felony defendants could be detained in county jails prior to their court hearings.

**Explanation of Local Revenues:**(Revised) *Archeology--Penalty Provisions*. If additional court actions are filed and a judgment is entered, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$70 court fee (for infractions) or \$120 court fee (for felonies and misdemeanors) that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

**State Agencies Affected:** Department of Correction; DNR; IDEM.

**Local Agencies Affected:** Trial courts, local law enforcement agencies.

**Information Sources:** Sandra Flum, Legislative Liaison, IDEM, 317-233-9479; Indiana Sheriffs' Association, Department of Correction..

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