

Economic Impact Statement

LSA Document #09-137

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Amends [312 IAC 6](#) governing the placement of structures in navigable waters to provide new standards for the placement of piers. Individual licensure is required for "group piers", and amended individual licensure applies to "marinas". The rule incorporates by reference a nonrule policy document, assisting in the identification of riparian zones, for use as guidance in performing the functions of [IC 14-29-1](#) (sometimes called the "Navigable Waters Act"). The rule also provides standards for lawful nonconforming uses and makes technical changes.

Estimated Number of Small Businesses Subject to this Rule:

The Department of Natural Resources (DNR) currently regulates construction in navigable waterways under [IC 14-29-1](#) and [312 IAC 6](#), as well as any construction in the floodway under [IC 14-28-1](#) and [312 IAC 10](#). A permit is already required for the placement of a pier in any river or stream. Annually, the DNR receives five to 10 applications for the construction of piers, mostly from private landowners. Small businesses that might be affected by this rule would likely include marinas or perhaps a restaurant that has river frontage and provides piers for boaters to dock while they stop for a meal. Based on the DNR's permit records for the last 15 years, the estimate is that annually one or two small businesses would apply for a new pier. Marinas and restaurants are typically located on the larger and busier navigable waterways, and it is estimated that there are not more than 20 such facilities which might seek to qualify facilities as lawful nonconforming uses.

Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small Businesses Will Incur for Compliance:

A potential cost to these small businesses is associated with providing the documentation to qualify as a lawful nonconforming use or in conjunction with costs to prepare an application primarily related to demonstrating the license would comply with [312 IAC 6-4-4\(b\)](#). An applicant or owner is not required to retain professional assistance to prepare information in support of a new application or to document a nonconforming use. The documentation needed to support a lawful nonconforming use is readily available and inexpensive. The cost to establish a lawful nonconforming use for each small business is estimated to be less than \$100. These one-time expenses and costs could be averaged over the remaining life of the pier. Permits are already required for the construction of a pier in the floodway ([IC 14-28-1](#)) or within a navigable waterway ([IC 14-29-1](#)). The cost of preparing an application and plans may be increased as a result of supplying data relative to placement of a pier. The increased cost to file an application is estimated to be \$500 to \$1,000.

Estimated Total Annual Economic Impact on Small Businesses to Comply:

(A) The proposed rule would apply to approximately 22 small businesses during the first 12 months following implementation. This number would include the documentation for qualification of 20 existing facilities as lawful nonconforming uses and the filing of two new permit applications. The estimated total annual economic impact for the first year would be \$4,000.

(B) Economic impact of this rule is based upon estimates made by the staff of the Division of Water, Department of Natural Resources, who process and review 800 to 900 permit applications annually and are in regular contact with the applicants or the agents regarding preparation and review of application materials and plans.

Justification Statement of Requirement or Cost:

The state of Indiana holds the waters of navigable waterways in trust for the citizens of Indiana. Under [IC 14-19-1-1](#), the DNR is the agency with general charge of the trust. As such, the DNR must seek to strike a balance between the rights of riparian landowners to use their water frontage and the rights of the public to use the waterway. In recent years, with the size and number of boats increasing on waterways, the number of disputes and public safety concerns regarding the size and placement of piers on Indiana's waterways has increased. The current lack of standards regarding the placement of piers has left the public with the only alternative of initiating legal action to resolve these riparian disputes. In some cases this approach has led to the expenditure of thousands of dollars in legal fees, and, lacking statewide standards, the likelihood is that different courts will issue inconsistent decisions. The problem can be aggravated if the DNR is a party to the litigation, because, in its absence, navigation safety and the public trust may not even be considered. This proposal would provide predictability for regulated entities as to what are the "rules of the game" and should lessen the frequency of litigation.

Regulatory Flexibility Analysis of Alternative Methods:

The new requirements do not impose onerous burdens on small businesses and provide the advantage of articulating understandable agency expectations. A range of more stringent regulatory requirements could be envisioned, including requiring individual licenses for every pier placed in a navigable waterway. The resulting burden of universal individual licenses seems unwarranted by current usage, and it would be difficult or impossible for the DNR to administer within budgetary constraints. Instead, new individual licenses would be required only for "group piers".

A "public freshwater lake" is a type of waterway not regulated as a navigable waterway but through a legislative philosophy that is very similar to a navigable waterway. Within the last 10 years on public freshwater lakes, "group piers" have become a major source of controversy among users and a major challenge to DNR regulation. In the context of public freshwater lakes, rules were not adopted until after many local hot spots boiled over. The delay has aggravated efforts to implement an effective regulatory program.

"Group piers" have not yet generated the same intense controversy or challenge on navigable waterways as they have on public freshwater lakes, but public interest suggests a similar situation is emerging. It may be noteworthy that the proposed rule changes were initiated largely by concerned citizens outside the agency.

The alternative method of universal individual licensure has been considered and rejected. This alternative is unwarranted by current usage and agency budgetary constraints. The alternative method of maintaining the status quo has also been considered and rejected. This alternative is inadequate with the potential for allowing what appears now to be a manageable challenge to become one that is unmanageable. The proposed regulatory system would impose minimal burdens while presenting a realistic possibility of success.

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