

Economic Impact Statement

LSA Document #09-856

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses**Estimated Number of Small Businesses Subject to this Rule:**

Proposed [312 IAC 11-4-8](#) has economic impacts as subsequently analyzed. Other amendments within the rule provide language clarifications, are applied consistently with statutory definitions and existing practices, and do not have economic impacts.

The Department of Natural Resources (DNR) currently regulates construction in public freshwater lakes under [IC 14-26-2](#) and [312 IAC 11-1](#) through [312 IAC 11-5](#). An individual license is required for the placement of a group pier in a public freshwater lake. In the first three quarters of calendar year 2009, 11 persons applied for licenses for group piers on public freshwater lakes. Of these 11, four or five are believed to have been small businesses. Based on this experience, the estimate is that approximately 10 to 15 group pier applications would be filed annually, including approximately four to six applications by small businesses.

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

There is a potential cost to these small businesses in providing documentation to demonstrate the license application would comply with the new rules, but there is no requirement an applicant retain professional assistance to prepare the information. An individual license is already required for the placement of a group pier in a public freshwater lake. The cost of preparing an application and plans may be increased as a result of supplying the additional data. The increased cost to complete an application is estimated to be between \$100 and \$200.

Estimated Total Annual Economic Impact on Small Businesses to Comply:

(A) The proposed rule would apply to approximately four to six small businesses, annually, following implementation. Individual licenses are already required for the construction of a group pier in a public freshwater lake. The cost of preparing an application and plans may be increased as a result of supplying the additional data relative to the placement of a group pier. The increased cost to complete an application is estimated to be between \$100 and \$200. The total annual economic impact on small businesses for compliance is estimated to be a maximum of \$1,200. Other amendments provide language clarifications. One item worthy of some note is that a person seeking to use the riparian area of another is required to obtain written permission and cannot assert acquiescence based upon silence, but this amendment has no fiscal consequences to small businesses.

(B) The economic impact of this rule is based upon estimates by professionals in the DNR's Division of Water. These professionals review 800 to 900 license applications, annually, and are in regular contact with applicants or their agents regarding the preparation and review of application materials and plans.

Justification Statement of Requirement or Cost:

The state of Indiana holds the waters of public freshwater lakes in trust for the citizens of Indiana. Under [IC 14-26-2](#), the DNR is the agency with regulatory authority for the trust. The DNR must seek to balance the rights of riparian landowners to use water frontage with the rights of the public to use the lake. In recent years, with the size and number of boats increasing, the numbers of disputes and public safety concerns have increased regarding the size and placement of piers on Indiana's public freshwater lakes. In particular, group piers with their potential for spatial predominance are a source of controversy as has been attributed by the General Assembly's Lake Management Work Group. Included among concerns are the potential for navigational congestion, challenges to public safety, and environmental degradation.

The current lack of standards regarding the placement of group piers has left the public with the only alternative of initiating legal action to resolve their riparian disputes. In some cases, this approach has led to the expenditure of thousands of dollars in legal fees, and lacking statewide regulatory standards, the likelihood is different courts would issue inconsistent decisions. The problem can be aggravated if the DNR is not a party to the litigation, because in its absence, navigation safety and the public trust may not be considered.

The rule would provide improved predictability for regulated entities as to the "rules of the game" and should lessen the frequency of litigation. The amendments are needed to promote public safety, allow riparian owners to enjoy their rights, and provide clarity and efficiency to resolve user disputes in the implementation of [IC 14-26-2](#).

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 can be envisioned, including requiring individual licenses for every pier placed on a public freshwater lake. 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. Another alternative would be to prohibit the placement of group piers on public freshwater lakes. This alternative seemingly conflicts with the DNR's responsibility to preserve and protect public freshwater lakes for all Indiana citizens.

Within the last 10 years, group piers have become a major source of controversy to users of public freshwater lakes and a major challenge to DNR regulation. Rules requiring an individual license were not adopted until after many local hotspots boiled over. The delay aggravated efforts to implement an effective regulatory program. Questions are now being asked about what the agency standards are for the review and approval of group piers. This rule seeks to provide answers to those questions and to help guide applicants on how to formulate an approvable application.

The alternative methods of universal individual licensure or outright prohibition have been considered and rejected. These alternatives are 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 rule would impose minimal burdens while offering a realistic possibility of success.

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