

*Indiana Perspective Environmental Law Newsletter*

## Summary of 2010 Environmental Legislation

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The following is Plews Shadley Racher & Braun LLP's summary of the new 2010 laws relating to the environment or natural resources. Plews Shadley Racher & Braun LLP has been preparing this type of legislative summary since 1994. Our summary is different because it is organized by subject matter rather than by bill number. This arrangement should allow you to see the changes in the law in a way that is easier to identify which laws may impact you and your business. In our summary we strive to explain in detail the new law or how an existing law is changed by the various legislation. At the end of each summary is a citation to the House or Senate Enrolled Act and Sections where the language of this law can be found, along with its corresponding Public Law number and Indiana Code citations. While you always need to review the actual language of any law to apply it to a specific situation, we hope that this summary will alert you to changes in Indiana law.

As a result of the bad economy there actually was little focus on environmental legislation and nearly all of the introduced legislation failed. Nevertheless we found some changes to the law that may be of interest to you.

All of the prior legislative summaries are also available on our webpage at [www.psrb.com](http://www.psrb.com). We would be pleased to answer any questions you may have after you have reviewed these summaries. In addition, we have 34 attorneys, one of whom should be able to assist you with any legal issues you may have. Please contact us if we can be of service to you.

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## **LAWS AFFECTING THE DEPARTMENT OF NATURAL RESOURCES**

### **COLLECTOR SNOWMOBILES REQUIRED TO BE REGISTERED BEFORE OPERATING ON PUBLIC LAND**

The Department of Natural Resources' ("DNR") land recreation laws were revised this year to specifically include collector snowmobiles in the category of off-road vehicles that must be registered with DNR in order to operate on public property. A collector snowmobile is defined as a snowmobile that is at least 25 years old and is owned and operated as a collector snowmobile for participation in special events of limited duration, including races, parades and other group events. Persons required to register must, every three 3 years, file an application for registration with DNR on forms provided by DNR, sign the application, if the off-road vehicle is purchased after December 31, 2003, include a copy of the bill of sale, include a signed affidavit in which the applicant swears or affirms that the information set forth in the application by the applicant is correct and pay a fee of \$30.

SEA 400, SECTIONS 5 and 6, Public Law No. 86-2010; Ind. Code 14-16-1-1.8 and Ind. Code 14-16-1-8, effective July 1, 2010.

### **CONSERVANCY DISTRICTS**

#### **Election of New Board Members**

Under existing law, a conservancy district may be established for flood prevention and control, improving drainage, providing for irrigation, providing water supply for domestic, industrial, and public use, providing for the collection, treatment, and disposal of sewage and other liquid wastes, developing forests, wildlife areas, parks, and recreational facilities for beneficial water management, preventing the loss of topsoil from injurious water erosion, storage of water for augmentation of stream flow, and operation, maintenance, and improvement of a work of improvement for water based recreational purposes. The County Commissioners are responsible for appointing the first Board of Directors after a conservancy district is formed. At each annual meeting of the district, directors shall be elected to fill vacancies on the board due to expiration of terms, resignation, or otherwise. By law the election shall be conducted by written ballots and to be elected an individual must receive a majority of the votes of the freeholders of the district who are present and voting in person or who are absent but have mailed or delivered a written ballot vote. The law was changed on July 1, 2010 to provide that if there is only 1 nominee for election to the Board of Directors to represent an area, then that nominee is considered elected, without the need for a vote by ballot. The law was also clarified to provide that if there is only one nominee for each area within the district, then there is no need to hold any election and all nominees are considered elected as if an election had been held.

SEA 110, Public Law No. 16-2010 SECTIONS 2 and 5, Ind. Code 14-33-5-11.5, and Ind. Code 14-33-5.4-7.5 effective July 1, 2010.

## Freeholders Entitled to Vote

On March 12, 2010, the conservancy district law was amended to allow one vote for each freehold. Previously the law provided that freeholders were entitled to vote in the same manner a freeholder was determined for purposes of petitioning to form a District. Under that provision of the law, a sole owner of a freehold that owns more than one freehold counted as just one freeholder and was entitled to just one vote. If a freeholder was a joint tenant of two or more different freeholds, if the joint tenancy was the same, then the ownership qualified as only one freeholder with one vote. However if the joint tenancy was different then each freehold was entitled to a vote. Effective March 12, 2010 each freehold is now entitled to one vote, even a sole owner of multiple freeholds and joint tenancy owns owning more than one freehold in the district.  
SEC 110, Public Law No. 16-2010 SECTION 1, Ind. Code 14-33-5-5, effective March 12, 2010.

## Stark County Conservancy District Law Changed to Allow Disqualification of Certain Freeholders

The conservancy district law contains special provisions for counties that have a population of more than 23,500 but less than 24,000. Currently that is only Starke County, Indiana. The law was change effective March 12, 2010 to give the Secretary of that District the right to determine to exclude a freeholder from voting. The law in effect until March 12, 2010 provided that land owned by joint tenants qualifies as just one freeholder with one vote. If a freeholder owned more than 1 tract of land, that freeholder is still entitled to just one vote. However if a person is a joint owner of one tract and a joint tenant of another track with a different person, then those two tracts each are entitled to one freeholder vote. The law was changed on March 12, 2010 to provide that for voting each freehold is entitled to one vote. However for Starke County the law also changed on March 12, 2010 to allow the secretary of the district to disqualify a freeholder from a vote, if in the opinion of the secretary a freehold has been divided into multiple freeholds for the sole purpose of increasing the number of freeholders eligible to cast a vote in an election. The secretary's decision to disqualify a freeholder may be challenged by petitioning the circuit court of the county.  
SEA 110, Public Law No. 16-2010, SECTION 4, Ind. Code 14-33-5.4-5, effective March 12, 2010.

## Use of Conservancy District Land for Cell Towers

Effective July 1, 2010 Conservancy District Boards of Directors have been provided a new power to enter into leases of land to providers of commercial mobile service to allow the construction and use and maintenance of a tower to be used for telecommunications.  
SEA 110, Public Law No. 16-2010 SECTION 3, Ind. Code 14-33-5-18, effective July 1, 2010.

## CONSTRUCTION IN FLOODWAY – REMOVAL OF LOGJAMS

The Department of Natural Resources' ("DNR") flood protection law requires that persons obtain a permit prior to erecting, making, using or maintaining a structure, an obstruction, a deposit, or an excavation in or on a floodway. The law exempts 4 specific types of activities from this requirement to have a permit and allows the Natural Resources Commission to adopt by rule an exemption for other types of activities that the Commission determines will pose not more than a minimal threat to floodway areas. This year, the legislature added a 5th specific type of activity that is exempt by law from having to first obtain a permit from DNR before construction in a floodway. Specifically, removal of a logjam or mass of wood debris that has accumulated in a river or stream will no longer require prior approval and issuance of a DNR permit for construction in a floodway. This new exemption is conditioned upon the person complying with 9 requirements. This means failure to meet just one of these requirements will defeat the exemption and a floodway construction permit will still be required.

- (1) The work must either not be within a salmonid stream, or if within a salmonid stream the exemption applies only if written approval has been obtained from DNR's Division of Fish and Wildlife. See 327 IAC 2-1.5-5 for the designated salmonid streams. Currently included are Trail Creek and its tributaries downstream to Lake Michigan, the East Branch of the Little Calumet River and its tributaries downstream to Lake Michigan via Burns Ditch, Salt Creek above its confluence with the Little Calumet River, Kintzele Ditch (Black Ditch) from Beverly Drive downstream to Lake Michigan, the Galena River and its tributaries in LaPorte County, the St. Joseph River and its tributaries in St. Joseph County from the Twin Branch Dam in Mishawaka downstream to the Indiana/Michigan state line, the Indiana portion of the open waters of Lake Michigan, and those waters designated by the DNR for put-and-take trout fishing.
- (2) The work must not be within a designated natural, scenic or recreational river or stream. See 312 IAC 7-2 for streams with this designation. Currently included are portions of Blue River in Harrison, Crawford and Washington Counties, portions of Cedar Creek in Allen and DeKalb Counties and portions of Wildcat Creek in Tippecanoe and Carroll Counties.
- (3) Free logs or affixed logs that are crossways in the river channel must be cut, relocated, and removed from the floodplain. Logs must be removed and secured in a way that does minimum damage to vegetation. Logs may be left in the floodplain if properly anchored or otherwise secured to resist flotation or dislodging by the flow of water.
- (4) Isolated or single logs that are embedded, lodged, or rooted in the channel and do not span the channel or cause flow problem may not be removed, unless one of 2 conditions exist: (a) The log is associated with or near larger obstructions or (b) the log is posing a hazard to navigation.
- (5) A leaning or severely damaged tree that is in immediate danger of falling into the water may be cut and removed only if the tree is associated with or near to an obstruction. The root system and stump must be left in place.

- (6) Construction of access roads must be minimized and not result in raising the floodplain.
- (7) To the extent practicable, work should be performed from one side of the waterway. Crossing the bed of a waterway is not allowed.
- (8) Appropriate sediment control measures must be installed to prevent dirty water flowing back into the waterway.
- (9) Within 15 days all bare and disturbed areas must be re-vegetated with a mixture of grasses and legumes. Tall fescue cannot be used, except that low endophyte tall fescue may be used in the bottom of the waterway and on side slopes.

HEA 1232, Public Law No. 76-2010; Ind. Code 14-28-1-22(b) (6), effective July 1, 2010.

#### HUNTING LICENSES – VOLUNTARY DONATION TO FEED THE HUNGRY

In 2008 the legislature created the Indiana Sportsmen’s Benevolence Account to be administered by the Division of Law Enforcement in the Indiana Department of Natural Resources (“DNR”). The purpose of this law was to encourage citizen participation in feeding the state’s hungry through donations of wild game that were lawfully hunted. Money in the account comes from gifts, donations and proceeds derived from marketing donations of wild game. This year a new source of funds for the Sportsman’s Benevolence Account was created. DNR is to establish a procedure to collect voluntary donations for processing wild game when hunting licenses are sold. All such donations collected will be deposited in the Sportsman’s Benevolence Account. In addition the law was changed to add a new duty for the Division of Law Enforcement. Previously the Division of Law Enforcement was to conduct a publicity campaign relating to feeding the state’s hungry through donations of wild game, and coordinate with nonprofit entities and other entities with goals of feeding the state’s hungry. This year the legislature has charged the Division of Law Enforcement with the additional duty of coordinating with nonprofit entities to use this new source of funds – the voluntary hunting license donations – to assist meat processors in processing donations of wild game for feeding the state’s hungry.

HEA 1064, Public Law No. 46-2010; Ind. Code 14-9-5-4 and Ind. Code 14-22-12-1(d), effective July 1, 2010.

#### LAKE MANAGEMENT WORK GROUP DEADLINE FOR REPORT EXTENDED

Last year the Legislature codified the creation of the Lake Management Work Group. This Work Group has been in existence since 1997 through noncode amendments to the Indiana Code. This year the legislature extended the date by which the Lake Management Work Group must issue its final report. The report had been due before July 1, 2010. It is now due before July 1, 2011. The Lake Management Work Group is a 26 legislative and public member group directed to problems and issues associated with public fresh water lakes. The Lake Management Work Group is to do the following:

- Monitor, review and coordinate the implementation of the work groups recommendations issued in 1997 and 2000;

- Facilitate collaborative efforts among state, county and local government entities in cooperation with lake residents and related organizations;
- Conduct public meetings to hear testimony and receive written comments concerning lake resource concerns and the implementation of the work group's recommendations;
- Review, update, and coordinate the implementation of new and existing recommendations by communicating with the public, the General Assembly and other governmental entities concerning lake resources;
- Review and coordinate the development and maintenance of an Internet web site that includes information on the management of lake and watershed resources;
- Issue reports to the Natural Resources Study Committee when directed to do so;
- Review all funding that is used for Indiana's waterways, including potential funding sources that could be used by the General Assembly to correct funding problems
- Issue a final report before July 1, 2011.

HEA 1040, Public Law No. 59-2010; Ind. Code 2-5.5-3, effective March 17, 2010.

#### OFF-ROAD VEHICLE REGULATION

The legislature added two new definitions to the Department of Natural Resources' ("DNR") Land Recreation and State Park and Recreation Areas laws related to off-road vehicles. Definitions of an "all-terrain vehicle" and a "recreational off-highway vehicle" were added to the law and those types of vehicles were specifically added to the list of motor driven vehicles that are regulated as off-road vehicles. The Legislature also specifically prohibited counties, cities, towns and DNR from adopting rules or guidelines that limit off-road vehicles to less than 1 ton.

SEA 400 SECTIONS 2, 3, 4, 7, 8 and 9; Public Law No. 86-2010; Ind. Code 14-8-2-5.7, Ind. Code 14-8-2-185, Ind. Code 14-8-2-233.5, Ind. Code 14-16-1-22, Ind. Code 14-16-1-31 and Ind. Code 15-12-3-2, effective July 1, 2010.

#### OFF-ROAD VEHICLES TORT IMMUNITY

The tort immunity law was changed on July 1, 2010 to add a 23<sup>rd</sup> activity that a government entity or employee acting within the scope of the government employee's employment is not liable for if a loss results. Specifically tort immunity will be available for a loss resulting from the operation of an off-road vehicle on a public highway in a county road system outside the corporate limits of a city or town by a nongovernmental employee or a government employee not acting within the scope of employment. This tort immunity does not exist if the loss is the result of an act or omission amounting to gross negligence, willful or wanton misconduct or intentional misconduct. The legislature also make clear that by adding this new activity to the list of activities for which there should be no tort liability, this new section is not to be construed to relieve a governmental entity from liability for the continuing duty to maintain highways in a

reasonably safe condition for the operation of motor vehicles licensed by the Bureau of Motor Vehicles for operation on public highways.

SEA 400 SECTION10, Public Law No. 86-2010; Ind. Code 34-13-3-3, effective July 1, 2010.

## OIL AND GAS PERMITS FOR COAL BED METHANE WELLS

On March 17, 2010, the Department of Natural Resources' ("DNR") Oil and Gas Law was amended to include a "coal bed methane well" in the definition of "well for oil and gas purposes." It is that defined term that establishes the wells for which an oil and gas permit is required. The Division of Oil and Gas had already issued permits for coal bed methane wells, which had made clear the need for new legislation to specifically regulate this new type of well. The Legislature has defined coal bed methane as gaseous substances of whatever character lying within or emanating from: (a) unmined coal seams, either naturally or as a result of stimulation of the coal seam, (b) the void created by mining out coal seams, or (3) the gob created by coal mining. The law was also amended to temporarily prohibit issuance of Oil and Gas permits for coal bed methane wells. Permits may not be issued after March 17, 2010 nor before July 1, 2012 – including well permit applications that had been filed before March 17, 2010. The only exceptions to this temporary prohibition on issuance of the required Oil and Gas permit is where the owner of the coal mineral consents to the extraction of the coal bed methane and consents to issuance of the permit or if the coal bed methane well was already being operated under a permit issued by DNR on March 17, 2010.

HEA 1265, SECTIONS 1, 3 and 4, Public Law No. 78-2010; Ind. Code 14-37-4-1, 14-8-2-317 and 14-37-4-1, effective March 17, 2010.

The Legislature also directed the Natural Resources Study Committee to study during the 2010 interim whether new or amended statutes or rules are appropriate. The specific topics to be studied include:

- (1) The safety of miners who could be affected by coal bed methane extraction activities;
- (2) Coal bed methane well spacing, unit and bonding requirements;
- (3) The relative interests of the owner of the right to coal bed methane and the owner or owners of the surface rights and other mineral rights;
- (4) Requirements for the owner of the right to coal bed methane to give notice of coal bed methane extraction activities to owners of the surface rights and other mineral rights;
- (5) Requirements for permits for extraction of coal bed methane, including public notice when the permit application is filed;
- (6) Requirements for the protection of surface water and ground water from any potential effects of coal bed methane extraction activities;
- (7) Encouragement of the development of coal bed methane that takes into account the protection of commercially minable coal resources;
- (8) The right of the person entitled to develop a well for oil and gas purposes to enter the property for extraction activities and responsibility to pay damages or compensation to the owner of the surface;

(9) The adequacy of conventional oil and gas statutes and rules to protect owners of the surface rights, the public, and commercially minable coal resources

The Natural Resources Study Committee is to issue its report and recommendations as directed by the Legislative Council, which can be anticipated to occur in time for new statutes to be passed, if determined necessary, prior to lifting the prohibition on coal bed methane well permit on July 1, 2012.

HEA 1265 SECTION 5, Public Law No. 78-2010; Noncode amendment, effective March 17, 2010.

#### OIL AND GAS DEFINITION OF COMMERCIALY MINABLE COAL RESOURCE EXPANDED

The legislature expanded the definition of what is commercially minable coal resource for purposes of the Oil and Gas program. Under the Oil & Gas law, the Natural Resources Commission's rules must contain requirements to ensure protection of commercially minable coal when an oil and gas well is drilled. Previously commercially minable coal resources included a seam of coal that was at least 36 inches thick and located not more than 800 feet below the ground surface. Now, in addition to those specific seams, a commercially minable coal resource also includes a seam of coal that can be mined using generally accepted underground practices and suitable equipment and consists of coal in sufficient quantities and sufficient quality to be commercially saleable. Also included are: (1) a seam of coal associated with an permitted underground mine that is intended to be mined under that permit; (2) a seam of coal associated with an inactive underground mining operation that has temporarily ceased mining operations, but where the mining operations are anticipated to be resumed by the person with the right to develop the seam of coal; and (3) a seam of coal identified on a map as a commercially minable coal resource which map has been filed with the Division of Oil and Gas, along with an affidavit that the seam is being held by the owner or lessee for later production.

HEA 1265 SECTION 2, Public Law No. 78-2010; Ind. Code 14-8-2-47, effective March 17, 2010.

#### SOIL & WATER CONSERVATION DISTRICT PAYMENTS

The law governing local soil and water conservation districts was amended this year to make it easier to ensure timely payment of some bills. Claims must be approved by the governing body of the soil and water conservation district before the district's fiscal officer may issue payment. Effective July 1, 2010, the governing body of a soil and water conservation district may authorize the fiscal officer to pay any or all of the following before being approved at a meeting, provided at the next meeting the governing body is provided information to review and approve the payment after-the-fact:

1. Payroll;
2. Insurance premiums;
3. Utility payments;
4. Bulk mailing fees;

5. Maintenance agreements and service agreements;
6. Lease agreements and rental agreements;
7. Expenses that must be paid because of emergency circumstances;
8. Recurring or periodic expenses specifically authorized by a resolution adopted by a governing body meeting.

HEA 1119, Public Law No. 52-2010; Ind. Code 14-32-4-24, effective July 1, 2010.

## **LAWS AFFECTING AGRICULTURE**

### **FARM WAGON DEFINED FOR MOTOR VEHICLE LAWS**

Effective July 1, 2010 the definition of a “farm wagon” for purposes of the Motor Vehicle Laws, has been expanded to include a 3, 4 or 6 wheeled construction related motor vehicle that is used primarily for construction related purposes, including hauling building material and is capable of cross-county travel without a road and on or immediately over land, water, snow, ice, marsh, swampland or other natural terrain. Most of the Motor Vehicle laws exempt farm wagons from regulation.

SEA 400, SECTION 1, Public Law No. 86-2010; Ind. Code 9-13-2-60, effective July 1, 2010.

### **STANDARDS FOR LIVESTOCK AND POULTRY CARE**

The laws enforced by the Indiana State Board of Animal Health (“Board of Animal Health”) were amended this year to expand, effective January 1, 2011, the Board of Animal Health’s authority and rulemaking power to address care of poultry and livestock. The Board of Animal Health’s current duties are defined as supervising the prevention, detection, control, and eradication of diseases and pests affecting the health of animals within and in transit through Indiana and supervising the production, manufacture, processing, and distribution of products derived from animals in order to control health hazards that may threaten the public health and welfare of the citizens of Indiana. The law already contains provisions for humane slaughter and already provides the Board of Animal Health with the power and duty to assist organizations that represent livestock producers with issues and programs related to the care of livestock. On January 1, 2011 the Board of Animal Health will also have the power and duty to assist organizations that represent poultry producers with issues and programs related to the care of poultry. In addition the Board of Animal Health will have the new rulemaking authority to adopt rules to establish standards for care of livestock and poultry. When adopting those standards the Board of Animal Health is to consider:

- (1) the health and husbandry of the livestock and poultry;
- (2) generally accepted farm management practices;
- (3) generally accepted veterinary standards and practices;
- (4) the economic impact the standards may have on livestock and poultry farmers, the affected livestock and poultry section and consumers.

HEA 1099, Public Law No. 50-2010; Ind. Code 15-17-2-87, Ind. Code 15-17-3-13 and Ind. Code 15-17-3-23, effective January 1, 2011.

## **LAWS AFFECTING ENERGY**

### **RENEWABLE ENERGY REDEFINED**

The Utility Generation and Clean Coal Technology law will be amended on January 1, 2011 to change how Renewable Energy Resources is defined. Current law defines renewable energy resources to include energy from wind, solar energy, photovoltaic cells and panels, dedicated crops grown for energy production, certain organic waste biomass that is available on a renewable basis, hydropower from existing dams, fuel cells, energy from waste to energy facilities, and energy from storage system. What will be amended is just the type of renewal energy resources that comes from organic waste biomass. Currently the organic waste biomass includes agriculture crops, agricultural wastes and residues, wood and wood wastes that includes wood residues, forest thinnings, mill residue, and waste from clean construction and demolition, animal wastes, and aquatic plants. Effective January 1, 2011 waste from clean construction and demolition will no longer be included as a renewable energy resource but animal byproducts and algae will be added as a type of organic waste biomass type of renewable energy resource.

HEA 1261 SECTION 1, Public Law no. 95-2010; Ind. Code 8-1-8.8-10, effective January 1, 2011.

### **E-85 FUELING STATION GRANT PROGRAM RENAMED**

In addition, the Department of Agriculture law is being changed retroactively, back to January 1, 2010. First the E85 Fueling Station Grant Program has been renamed the Agricultural Biomass Infrastructure Grant Program and a definition of biomass was added to clarify the legislature's intent in directing the Department of Agriculture to administer economic development efforts for agriculture by facilitating the use of biomass to generate renewable energy. The definition of biomass for the Department of Agriculture is now the very same as the definition of organic waste biomass included in the Utility Generation and Clean Coal Technology law, which includes agriculturally based sources of renewable energy from agricultural crops, agricultural waste and residues, wood and wood products, animal wastes, animal byproducts, aquatic plants and algae. The prior E85 Fueling Station Grant Program, now known as the Agricultural Biomass Infrastructure Grant program, was changed on January 1, 2010 to add a definition of biofuels. Biofuels means biomass converted into liquid or gaseous fuels. Starting January 1, 2010, grants can be awarded for investments in the production or distribution of biofuels (not including investment in research and development, land acquisition, agricultural tillage equipment, salaries or other noninfrastructure purposes determined by the Department of Agriculture). The grants available for production or distribution of biofuels through the use of a renewable energy system infrastructure must be award on a competitive basis and cannot exceed the lesser of 50% of the grant recipient's qualified investment or \$100,000.

HEA 1261, SECTIONS 2-11; Public Law No 95-2010; Ind. Code 15-11-2-3, 15-11-11-0.3-15-11-11-0.7, 15-11-11-3, 15-11-11-4.3, 15-11-11.4.7, 15-11-11-5, 15-11-11-7, 15-11-11-8, 15-11-11-11, effective retroactively back to January 1, 2010.

## MISC LAWS OF INTEREST

### ALCOHOLIC BEVERAGES

#### Sale of Alcohol on Election Days

Indiana law has historically prohibited sale of alcohol starting at 3 a.m. on election days through the period of time the election is being held. This year the legislature amended the law, and effective March 12, 2010 there are no longer prohibitions on the sale of alcoholic beverages during elections.

SEA 75, Public Law No 10-2010 SECTIONS 1, 2 and 11; Ind. Code 3-10-8-4.5, 3-10-8-9, and Ind. Code 7.1-5-10-1, effective March 12, 2010.

#### Sale of Alcohol on Sundays

The law prohibiting sale of alcohol on Sunday was slightly changed this year. Retailer permittees previously were allowed to sell alcohol on Sunday along with food, between the hours of 10 A.M. on Sunday until 12:30 A.M. the following day. The legislature changed the law this year extending the time for Sunday alcohol sales so now those same retailer permittees may sell alcohol from 7 A.M. on Sunday until 3 A.M. the following day.

SEA 75; Public Law No. 10-2010 SECTION 4, Ind. Code 7.1-3-1-14, effective March 12, 2010.

#### Photographic Identification Required for Purchase of Alcohol

Indiana law changed on July 1, 2010 affecting anyone who purchases alcohol. Before anyone may purchase alcohol from a person required to have a permit under the state alcohol laws (such as the retail beer, wine and liquor permits), the person must produce a driver's license, an identification card, or a government issued document bearing the person's photograph and birth date showing that the person is at least 21 years of age. It is a Class B misdemeanor for a permittee or its employee or agent to recklessly, knowingly or intentionally sell, barter, exchange, provide or furnish a person an alcoholic beverage for consumption off the licensed premises without first requiring production of the required identification document. However in a criminal or administrative proceeding the permittee has a defense against the charge if the person reasonably appeared to be more than 50 years of age.

SEA 75, Public Law No. 10-2010, SECTION 12, Ind. Code 7.1-5-10-12, effective July 1, 2010.

#### Alcohol Retailer and Dealer Permittee Training Extended to May 1, 2011

The law requiring retailer permittees and dealer permittees who operate establishments where alcoholic beverages are served or sold to ensure that each alcohol server completes a server program or a trainer program was amended this year to provide an addition 16 months until that training must be accomplished. Originally that training was to be done

no later than January 1, 2009, it was then extended to January 1, 2010. Now the server or trainer program must be completed by May 1, 2011.

SEA 75, Public Law No. 10-2010 SECTION 5, Ind. Code 7.1-3-1.5-13, effective July 1, 2010.

#### ATTORNEY GENERAL PARTICIPATION IN LEGAL ACTIONS CHALLENGING CONSTITUTIONALITY OF A STATUTE, ORDINANCE OR FRANCHISE

Effective July 1, 2010, new procedures exist to allow the Attorney General to participate in private party litigation involving a challenge to the constitutionality of a state statute, an ordinance or a franchise that affects the public interest. When declaratory relief is sought and an allegation is made that a statute, ordinance or franchise is unconstitutional, the court shall certify this fact to the Attorney General and the Attorney General may intervene to present otherwise admissible evidence that relates to the question of constitutionality and arguments on the question of constitutionality.

SEA 394, SECTION 1, Public Law No. 40-2010; Ind. Code 34-14-1-11, effective July 1, 2010.

If the constitutionality of a state statute, ordinance or franchise affecting the public interest is called into question in any action, suit or proceeding in any court and no agency, officer or employee of the state is a party, the court shall certify this fact to the Attorney General and the Attorney General may intervene to present otherwise admissible evidence that relates to the question of constitutionality and arguments on the question of constitutionality.

SEA 394, SECTION 2, Public Law No. 40-2010; Ind. Code 34-33.1-1(a), effective July 1, 2010.

If a party to an action bases its claim or defense on a statute or executive order administered by a state officer or agency or a rule, order, requirement, or agreement issued or made under the statute or executive order, the Attorney General is permitted to intervene in the action.

SEA 394, SECTION 2, Public Law No. 40-2010; Ind. Code 34-33.1-1(b), effective July 1, 2010.

The Attorney General may file an amicus curiae brief in any matter pending in any state court without the consent of the parties or leave of court. The Attorney General must file the amicus curiae brief within the time allowed for the party with whom the state is substantively aligned to file the party's brief or petition. For good cause shown a court may permit the Attorney General to file a belated amicus curiae brief. If allowed to file belatedly, the court shall set a deadline for an opposing party to file a reply brief.

SEA 394, SECTION 2, Public Law No. 40-2010; Ind. Code 34-33.1-2. effective July 1, 2010.

## PROFESSIONAL LICENSES

### Term for Renewal of Professional License

The law that generally applies to all professional licenses issued by state agencies was amended this year to provide that instead of issuance of an annual license, the license for 32 specific professions, including architects and landscape architects, professional engineers, professional geologists, water well drillers, and land surveyors, shall be issued for a minimum of 2 years, or any longer period that is set in the specific profession's licensing act.

SEA 356, SECTION 6, Public Law No. 84; Ind. Code 25-1-2-2.1, effective July 1, 2010.

### Cease and Desist Orders for Unlicensed Professional

A new section was added to the Professional Licensing law to allow the Licensing Board to file a complaint with the Attorney General when the Board believes a person, who is not licensed, certified or registered, is engaged in or believed to be engaged in activities for which a license, certification or registration is required. The Attorney General must investigate the complaint. If the investigation finds support for the complaint the Attorney General is to file a motion for a cease and desist order with the Licensing Board. Notice of filing that motion is to be given to the person, unless the Attorney General determines the person is engaged in activities that may affect an individual's health or safety. Upon review of the Attorney General's motion for a cease and desist order the Board may issue an order requiring the affected person to show cause why the person should not be ordered to cease and desist from such activities. The accused person will be provided a time and place for an administrative hearing conducted pursuant to Ind. Code 4-21.5 at which he or she may appear to show cause as to why the person is not subject to licensing, certification or registration by law. After hearing, the Licensing Board may issue a cease and desist order describing the person and activities subject to the order. A cease and desist order is enforceable in circuit or superior court and a person will be found to be in contempt of court for violation of a cease and desist order. Issuance of a cease and desist order does not relieve the person from criminal prosecution.

SEA 356 SECTION 13, Public Law 84-2010; Ind. Code 25-1-7-14, effective July 1, 2010.

### Evaluation of Regulated Occupations

A new Committee, to be known as the Regulated Occupations Evaluation Committee, took effect on July 1, 2010. The Regulated Occupations Evaluation Committee is to review and evaluate each regulated occupation with an ultimate goal of making recommendations for legislation on whether a regulated occupation should be modified, combined with another board, or terminated. The Committee will review 38 specific regulated occupations and any other regulated occupations that have been created since June 30, 1981. Included in this list of occupations are land surveyors, water well drillers,

professional engineers, professional geologists, architects and landscape architects among other professions. The Committee is composed of the following persons:

- (1) The Dean of the IU School of Public and Environmental Affairs or the Dean's designee, who is the chairperson for the committee.
- (2) The Director of the Indiana Professional Licensing Agency or the Director's designee.
- (3) The Attorney General or the AG's designee, as a nonvoting member.
- (4) Two individuals appointed by the Governor who are licensed in a regulated occupation, appointed for 3 year terms.
- (5) Two individuals appointed by the Governor who are not licensed in a regulated occupation, appointed for 3 year terms.

The Committee is to review and evaluate each regulated occupation for the following:

- (1) The function, powers, and duties of the occupation and the occupational licensing board, including any functions, powers or duties that are inconsistent with current or projected practice of the occupation.
  - (2) An assessment of the management efficiency of the licensing board.
  - (3) An assessment of the regulated occupation's and Board's ability to meet the objectives of the General Assembly in licensing the occupation.
  - (4) Any other criteria identified by the Committee.
- The Committee must allow testimony and must establish a schedule to review and evaluate each regulated occupation.

The Committee must report to the Governor, the Health Finance Commission and the Legislative Services Agency on each occupation at least every 7 years. The Report must contain the following:

- (1) The number of individuals who are licensed in the regulated occupation.
- (2) A summary of the Board's functions and actions.
- (3) The budget and other fiscal factors of regulating the occupation.
- (4) An assessment of the effect of the regulated occupation on the state's economy, including consumers and businesses.
- (5) Any recommendations for legislation, including whether a regulated occupation should be modified, combined with another board, or terminated.
- (6) Any recommendations for administrative changes.

SEA 356 SECTION 19, Public Law No. 84-2010; Ind. Code 25-1-16, effective July 1, 2010.

#### Environmental Health Specialists

The law and Board for Certification of Environmental Health Specialists was repealed, effective July 1, 2010.

SEA 356, SECTION 102, Public Law No. 84-2010; Ind. Code 25-32-1, effective July 1, 2010.

## Water Well Pump Installers

The law that requires a professional license to be a water well driller was changed to include the requirement for a professional license in order to act as a well water pump installer or repairer. Starting July 1, 2010 in order to install or repair a water well pump, the person must be licensed by the Department of Natural Resources (“DNR”) as a water well driller and water well pump installer. It is not necessary to have the license to install or repair a water well pump or water well pumping equipment for personal use, nor for a person who is working under the direction and personal supervision of a person who holds a license. A Licensed Plumber is required to register with DNR before installing a well or well water pump. To qualify for the water well driller and well water pump installer license, an individual must be at least 18 years of age, furnish evidence from 3 references, 2 of whom are water well drillers, water well pump installers, or licensed plumbing contractors familiar with the applicant’s work experience and professional competency, and successfully complete a competency examination prepared and administered by DNR, paying the examination fee set by DNR. DNR must administer the competency examination at least 2 times every calendar year.

SEA 356, SECTIONS 73-83, Public Law No. 84-2010, Ind. Code §§ 25-39-1.5-1, 25-39-1.5-2, 25-39-1.5-3, 25-39-1.5-4, 25-39-2-12, 25-39-2-12.5, 25-39-2-15.5, 25-39-3-1, 25-39-3-2, 25-39-3-3, and 25-39-3-3.5, effective July 1, 2010.

DNR shall prepare one or more competency examinations in consultation with the Indiana Well Drilling Contractors Association and the Indiana Ground Water Association. The competency examination must include questions to determine if the applicant for a license has adequate knowledge and expertise concerning the following:

- (1) Placement of wells;
- (2) Well drilling procedures;
- (3) Operations of well drilling and water well pump equipment;
- (4) Contamination precautions;
- (5) Installation of well casing and water well pumps;
- (6) Well grouting procedures;
- (7) Well screen design and installation;
- (8) Pitless adapter units;
- (9) Installation of pumping apparatus;
- (10) Well disinfection;
- (11) Sealing abandoned wells;
- (12) Ground water occurrence;
- (13) Aquifer characteristics;
- (14) Drawdown requirements and limitations;
- (15) Depth Considerations;
- (16) Methods of measuring well yield;
- (17) The requirements of the laws relating to wells, including the professionally licensing law; and
- (18) Other accepted standards relating to the drilling, operation and abandonment of wells and water well pumps.

The Natural Resources Commission must revise its rules for well siting, construction and operation to include standards for operation of water well pump equipment and water well pump specification and installation requirements.

SEA 356, SECTIONS 84-89, Public Law No. 84-2010, Ind. Code 25-39-3-4, 25-39-4-1, 25-39-4-2, 25-39-4-7, 25-39-4-8 and 25-39-4-10, effective July 1, 2010.

#### New Water Well Driller and Pump Installer License Continued Education Requirements

New continuing educational requirements take effect on July 1, 2010 for water licenses that have held a water well driller's and water well pump installer's license for at least 1 calendar year. Licensees must complete 6 actual hours of continuing education before December 31 of each even-numbered year, unless a waiver or modification has been granted by DNR. The licensee must keep a record of the number of hours spent in the continuing education course, the name of the person or organization presenting the continuing education course, the date, location and title of the course, the number of hours of continuing education awarded for the course and verification of attendance. The institution, organization, governmental agency, or individual that has been approved to offer a continuing education course shall submit to the DNR not more than 45 days after the course has been completed a typed listing of the names of each individual who attended, including the individual's license number, the title of the course the name of the person presenting the course, the date, location and title of the course, and the number of hours of continuing education each individual received.

An institution, organization, governmental agency or individual that seeks to offer continuing education courses for purposed of the water well driller and pump installer law must apply in writing to DNR for approval of each course. Approval must be sought at least 30 days before the course if offered. DNR shall approve or deny the course within 10 business days after receiving the application. The application must include:

- (1) The title of the course and subjects that will be presented;
- (2) The name of the person or organization presenting the course;
- (3) The date, location and title of the course;
- (4) The number of hours of continuing educating to e offered;
- (5) Course outlines for the subjects to be offered;
- (6) The fee to be charged for each course; and
- (7) Any other information required by DNR.

DNR may approve the course if it addresses one of the following topics:

- (1) Water well construction;
- (2) Pump installation and repair;
- (3) Grouting;
- (4) Water sample collection and sampling;
- (5) Contamination of water supplies; or
- (6) Other topics DNR determines to be relevant for the continued improvement of the knowledge of a license holder.

DNR must maintain and make available to the public a list of future continuing education courses that will satisfy the continuing education requirements.

A licensee may apply in writing to DNR for a waiver or modification of the continuing education requirements if the licensee establishes an emergency existed during the period for which the continuing education was required, or the licensee has had an incapacitating illness verified by a licensed physician, or the licensee was prevented from completing the continuing education because of active military duty during the period for which the continuing education was required.

DNR may enter into a contract with the Indiana Ground Water Association to administer this continuing education program.  
SEA 356, SECTION 90, Public Law No. 84-2010; Ind. Code 25-39-6, effective July 1, 2010.

## RADIOACTIVE WASTE LAWS CHANGED

### Permit Required to Transport Radioactive Waste

Prior law requires a person transporting high level radioactive waste in Indiana to give notice to the Director of Homeland Security of the highway or railway route, date and time of shipment and pay a transportation fee of \$1,000 for each cask of nuclear waste in the shipment. Effective July 1, 2010 the law has been changed to require a shipper of high or low level radioactive waste to submit an application to the Department of Homeland Security and obtain a permit before the person may transport the radioactive waste in Indiana. The definition of high level radioactive waste has been amended to include a fourth type of material – material produced as a byproduct of the reactions that occur inside a nuclear reactor in either the form of spent nuclear fuel or waste materials remaining after spent nuclear fuel is reprocessed. Current law already defined high level radioactive waste to include the following 3 waste materials (1) irradiated reactor fuel, (2) liquid wastes resulting from the operation of a first cycle solvent extraction system or its equivalent and the concentrated wastes from a subsequent extraction cycle or its equivalent in a facility for reprocessing irradiated reactor fuel, and (3) solids into which such liquid wastes have been converted. Low level radioactive waste is defined as radioactive material from a facility licensed by the United States Nuclear Regulatory Commission, other than high level radioactive waste, spent nuclear fuel, transuranic waste and byproduct materials. Byproduct materials include any radioactive material yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content; any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or any material that has been made radioactive by use of a particle accelerator; and is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and any discrete source of naturally occurring radioactive material, other than

source material, that the Nuclear Regulatory Commission determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and is extracted or converted after extraction for use in a commercial, medical, or research activity.

SEA 186 SECTIONS 3, 5, 7, Public Law No. 26-2010; Ind. Code 10-14-8-2, 10-14-8-2.5, 10-14-8-2.9, effective July 1, 2010.

The fee when shipping radioactive waste was increased on July 1, 2010. Before shipping high level radioactive waste in Indiana, the shipper must submit to the Director of Homeland Security a copy of the permit that has been issued for this shipment and for each truck shipment \$2,500 per truck. For each rail shipment the fee is \$4,500 for the first cask and \$3,000 for the second and additional cask. The transportation fee for low level radioactive waste is \$100 for each shipment.

SEA 186 SECTIONS 8 and 9, Public Law No. 26-2010; Ind. Code 10-14-8-3 and 10-14-8-3.1.

#### Emergency Response Plan Requirements Expanded

The law requiring the Director of Homeland Security to prepare a plan for emergency response to high level radioactive waste transportation accidents was amended on July 1, 2010 to require that this plan also address the plans for emergency response to transportation accidents involving low level radioactive waste. In addition the law was revised to require the Director of Homeland Security to report to the General Assembly each year on the status of the plan prepared and the ability of the state to respond adequately to not only transportation of high level radioactive waste, but also low level radioactive waste.

SEA 186 SECTION 10, Public Law No. 26-2010; Ind. Code 10-14-8-4, effective July 1, 2010.

#### Use of Nuclear Response Fund Expanded

The fees collected for each shipment of radioactive waste are currently deposited in the Nuclear Response Fund. The purposes for this fund were revised on July 1, 2010 to expand use for education, training and equipment for state emergency responders, in addition to local emergency responders. Its use is also now be available to address releases of both high and low level radioactive waste and is now available for otherwise enforcing the Homeland Security transportation of radioactive waste law.

SEA 180 SECTION 12, Public Law No. 26-2010; Ind. Code 10-14-8-6, effective July 1, 2010.

#### State Police Department Weigh Station Operators to Enforce Laws Related to Transportation of Radioactive Waste

The State Police Department laws have been changed to allow operators of weight stations to stop, inspect and issue citations to operators of trucks and trailers for violation of the Emergency Management laws related to illegal transportation of radioactive waste.

Weight Station operators have the same authority as law enforcement officers to detain a person who is found to be in violation of the law.

SEA 186 SECTION 1, Public Law No. 26-2010; Ind. Code 10-11-2-26, effective July 1, 2010.

#### Expanded Enforcement Authority

In addition, three new sections were added to the law related to enforcement of the transportation of radioactive waste law. First, the State Police may, effective July 1, 2010 detain, seize or impound a motor vehicle and its cargo, if the State Police Department determines that the motor vehicle is involved in a violation of the transportation of radioactive waste law. In order to obtain possession of a seized or impounded motor vehicle or its cargo, the motor carrier that operates the motor vehicle must correct any violation that resulted in the seizure or impoundment.

SEA 186 SECTION 14, Public Law No. 26-2010; Ind. Code 10-14-8-10, effective July 1, 2010.

Second all of the following entities will be given the authority to conduct inspections of motor vehicles and cargo to determine violations of the transportation of radioactive waste law:

- (1) The State Police Department;
- (2) Agents of the State Police Department;
- (3) Motor Carrier inspectors of the State Police Department;
- (4) Other Eligible Law Enforcement Officers.

If the shipment is by rail, rail safety inspectors are also authorized to inspect for violations.

SEA 186 SECTION 15, Public Law No. 26-2010; Ind. Code 10-14-8-11, effective July 1, 2010.

Third, a new criminal penalty has been established for violation of the transportation of radioactive waste law. Specifically a person who violates the law commits a Class B infraction. A Class B Infraction may be punished by a judgment up to \$1,000.

SEA 185, SECTION 16, Public Law No. 26-2010; Ind. Code 10-14-8-12, effective July 1, 2010.