

Straight TALK

by *John A. Arway*

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A Bill of Attainder

One of my personal goals when I became Pennsylvania Fish & Boat Commission (PFBC) Director in 2010 was to create a plan that would insure financial stability for the Commission far into the future. I evaluated the historical trends of spending and earning and quickly discovered that the agency goes through cycles of change. We are an agency that is unusual to state government, because we earn revenues through the sale of fishing licenses and boat registrations, and receive an allotment of federal aid based upon how many fishing licenses are sold in our state. Most other government agencies are funded by general funds and not special funds. Much like a private business, the PFBC is supported by the customers we serve; however, unlike a private business we are unable to independently change prices to adjust for the increases or decreases in demand for the public goods or services that we provide. Only the General Assembly and the Governor have the authority to make this change.

The Commission sold its first fishing licenses to 10 non-resident anglers in 1919 for a fee of \$5.00. Then, in 1922, we sold 203,061 licenses to Pennsylvania resident anglers for a fee of \$1.00. Before 1919, the agency was solely funded by General Funds and slowly transitioned to become a self-supported agency over the course of time. This change was driven by the sportsmen's desire to fund their own sports, so fish and wildlife management science drove decisions and not political science. Changes were occurring to our land and our water in the early 19th century. Many species of wildlife were close to brink of extinction in the mid-1800s and most sportsmen understood that something had to be done before all was lost. The bison herds of the western plains were depleted, and the American Shad were blocked by dams from migrating up the Susquehanna River. The towns that depended upon shad for food could no longer rely on the annual spring runs. The once abundant Brook Trout populations in our mountain streams were suffering from the impact of eroded soils from our mountains into our



photo-PFBC Executive Director John A. Arway

Pennsylvania Fish & Boat Commission Executive Director John A. Arway ice fishing with his grandson, Leif, at Foster Joseph Sayers Reservoir, Bald Eagle State Park, in January 2018.

streams, lakes and rivers due to indiscriminate logging. The Pennsylvania Fish Commission was created by the Pennsylvania General Assembly in 1866 to address these problems.

While the revenue from license sales helped fund fish and wildlife conservation, it fell far short of the amount necessary to meet the expectations of anglers and hunters across the nation. So, in 1937, sportsmen successfully lobbied Congress to pass the Pittman-Robertson Wildlife Restoration Act, which put an excise tax on the sale of all sporting arms and ammunition. This was followed in 1950 by the Dingell-Johnson Act, which placed a similar tax on fishing equipment and motorboat fuel. Today, every time you buy hunting and fishing equipment or gasoline for your boat motor, you contribute to these funds. Contributions from the federal government, based on this excise tax, support 25 percent of PFBC's total annual budget.

Today, unlike most other local, state or federal government agencies, PFBC receives no general funds (tax dollars) for agency operations. We are part of a unique group of fish and wildlife agencies across the nation who operate within our means. Some agencies receive other funding to supplement license revenues, but the core budgets of all state fish and wildlife agencies depend upon customer sales and excise tax revenues.

As fisheries recovered and interest grew in the sport of fishing, fishing licenses sales continued to increase until they peaked at 1,163,758 licenses in 1990. Since then,

Section. 9.

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

From the second page of the United States Constitution, Article 1, section 9.

sales have declined. A total of 845,565 licenses were sold in 2017. This is approximately a 4 percent reduction in sales compared to 2016 and an overall 27 percent loss of sales since 1990. Reduction in sales reduces revenues from not only the sale itself but also a reduction in the amount of federal revenue the Commission receives. Less money typically means less public services and goods.

The PFBC contracted with Penn State University (PSU) in 2016 to analyze PFBC operations, the competitive environment for its products and services, and trends impacting its ability to meet current and future objectives. The resulting PSU Business Plan (www.fishandboat.com/AboutUs/Documents/PSU-BusinessAnalysis.pdf) found that the agency faces more than \$100 million in infrastructure needs (i.e. unsafe dams, boat launches, buildings, hatcheries in need of repair) with increasing mandated expenditures and declining revenue streams. The report also concluded that the agency must either cut expenses or increase revenues if it expects to continue to be effective in both conservation and recreation moving into the future.

On September 26, 2017 in Erie, our Board of Commissioners directed me to cut \$2 million from the 2018-2019 budget and authorized me to close facilities and effect employee furloughs as necessary. My staff and I have been working closely over the past 8 years with both House and Senate members on a solution to increasing license fees. Unfortunately, the legislature has not been able to deliver any type of revenue bill that would prevent the need for cutting expenses. During my term as Director, we have cut the agency complement of positions from 432 to 381 to pay the increased costs of employee pensions and health care. I attend sportsmen's meetings across Pennsylvania, and most sportsmen understand our needs and support a modest fee increase, so we can continue doing our job to serve their interests.

My *Last Cast* plea (www.fishandboat.com/AboutUs/Documents/ArwayLastCastSB30.pdf) has not produced legislative action. So, there is no other option than to cut costs to solve the problem of balancing the budget. Therefore, coming out of the September Board meeting, I announced that in 2019 we would be potentially closing the

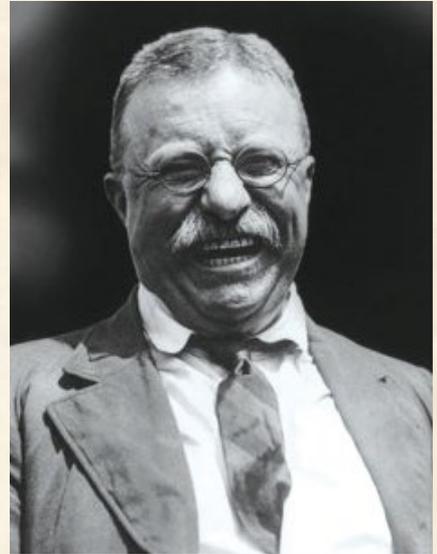
Oswayo State Fish Hatchery, which raises catchable trout, the Union City State Fish Hatchery, which raises warmwater/coolwater fish, and the Van Dyke Research Center, which raises American Shad fry. The decision to possibly close the three hatcheries was based purely on economic savings and minimizing the impacts on recreational fishing. It did not target hatcheries in legislative districts where legislators didn't support a license increase. However, political variables were used in other decisions that may result from these potential hatchery closures, i.e. what waters may not be stocked, as an attempt to minimize the impact of the cuts in legislative districts that supported a fee increase. There was an amazingly swift and immediate legislative response to this news. Not quite the action I had hoped for which would have been a license fee bill that would have provided the necessary revenue to eliminate the need for the cuts, but Senate Bill 935 (SB 935) was introduced instead. SB 935 would amend Title 30 Pa. C.S. §302 (a)(2) (Fish and Boat Code) to simply read "No individual may serve as the executive director for more than eight years." It passed the Senate in record time—6 days and currently resides in the House waiting for the vote of the House Game and Fisheries Committee, full House and signature of the Governor to become law.

Therefore, this may be my last "Straight Talk" column since my 8-year term expires on March 02, 2018. The reality of the situation is that although a plan was proposed to close facilities and cut staff, the plan would not be implemented until after July 2018. The plan is certainly subject to discussion and revision, but it gives the legislature plenty of time to act consistent with the support of the majority of our customers. No one likes to see prices increase. However, although fishing license fees have not increased since 2005, PFBC's expenditures have risen 34 percent (\$13.8 million).

In 1788, the states ratified the United States Constitution, which includes Article 1, Section 9, Clause 3—"No Bill of Attainder or ex post facto Law shall be passed." "A bill of attainder is a law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial" (Nixon v. Administrator of General Services., 433 U.S. 425, 468, 97 S.Ct. 2777, 2803, 53 L.Ed.2d 867 (1977)). Article 1, Section 10, Clause 1 further extends this prohibition to

“The Man in the Arena”

It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs, who comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deeds; who knows great enthusiasms, the great devotions; who spends himself in a worthy cause; who at the best knows in the end the triumph of high achievement, and who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who neither know victory nor defeat.—Theodore Roosevelt



Theodore Roosevelt

state legislatures. When SB 935 is read to mean that on its effective date it will apply to the sitting PFBC Executive Director and no one else, it appears that it is a Bill of Attainder and may violate the United States Constitution.

If this column is my last one, I can honestly say that the work I have accomplished with the help of others, the people I have met and the places I have visited over the last 38 years in public service have been, without a doubt, the most enjoyable experience anyone could have asked for. I believe that I have lived a career that supports the adage “If you really enjoy what you do for a living, you will never have to work a day in your life.” I take full responsibility for my actions, past, present and future, and would like to thank the PFBC Board of Commissioners for their patience and wisdom, their courage of action and their support of me over the past 8 years. I leave you as one of President Roosevelt’s Men in the Arena. There are only 50

of us in the country who can understand the challenges of being the present director of a state fish or wildlife agency. I am very proud and humbled to be a part of this prestigious group and look forward to enjoying, with family and friends, the accomplishments of the work we have done for many years to come.

Hope to see you on the water someday.

Your Director,

><(John{(<

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