



SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1383 be amended to read as follows:

- 1 Page 1, delete lines 1 through 17.
- 2 Delete pages 2 through 3.
- 3 Page 4, delete lines 1 through 4, begin a new paragraph and insert:
- 4 "SECTION 1. IC 13-11-2-17.5 IS ADDED TO THE INDIANA
- 5 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
- 6 [EFFECTIVE JULY 1, 2024]: **Sec. 17.5. (a) "Bog", for purposes of**
- 7 **IC 13-18-22, means a wetland ecosystem typically characterized**
- 8 **by:**
- 9 (1) **spongy, peat-rich, and highly acidic soils;**
- 10 (2) **enclosed depressions retaining rainwater resulting in**
- 11 **mineral poor water; and**
- 12 (3) **dominance of Sphagnum moss.**
- 13 (b) **Bogs typically include some combination of the following**
- 14 **types of plants:**
- 15 (1) **Carex spp. (including C. oligosperma, C. canescens, and C.**
- 16 **trisperma).**
- 17 (2) **Chamaedaphne calyculata.**
- 18 (3) **Vaccinium spp. (especially V. oxycoccos and V.**
- 19 **macrocarpon).**
- 20 (4) **Dulichium, Eriophorum spp.**
- 21 (5) **Sarracenia purpurea.**
- 22 (6) **Drosera spp.**
- 23 (7) **Rhus vernix.**
- 24 (8) **Larix laricina.**
- 25 (9) **Spiraea tomentosa.**
- 26 (10) **Decodon verticillatus.**
- 27 (11) **Vaccinium corymbosum.**
- 28 (12) **Betula pumila.**

**(13) Ferns (including osmunda regalis).
(c) Bogs are typically found in northern Indiana.**

SECTION 2. IC 13-11-2-25.8 IS REPEALED [EFFECTIVE JULY 1, 2024]. Sec. 25-8: (a) For purposes of IC 13-18:

(1) "Class I wetland" means an isolated wetland described by one (1) or both of the following:

(A) At least fifty percent (50%) of the wetland has been disturbed or affected by human activity or development by one (1) or more of the following:

- (i) Removal or replacement of the natural vegetation;
- (ii) Modification of the natural hydrology;

(B) The wetland supports only minimal wildlife or aquatic habitat or hydrologic function because the wetland does not provide critical habitat for threatened or endangered species listed in accordance with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and the wetland is characterized by at least one (1) of the following:

- (i) The wetland is typified by low species diversity;
- (ii) The wetland contains greater than fifty percent (50%) areal coverage of non-native invasive species of vegetation;
- (iii) The wetland does not support significant wildlife or aquatic habitat;
- (iv) The wetland does not possess significant hydrologic function;

(2) "Class II wetland" means an isolated wetland that supports moderate habitat or hydrological functions; including an isolated wetland that is dominated by native species but is generally without:

- (A) the presence of; or
 - (B) habitat for;
- rare, threatened, or endangered species; and

(3) "Class III wetland" means an isolated wetland:

(A) that is located in a setting undisturbed or minimally disturbed by human activity or development and that supports more than minimal wildlife or aquatic habitat or hydrologic function; or

(B) that is of one (1) of the following rare and ecologically important types:

- (i) Acid bog;
- (ii) Acid seep;
- (iii) Circumneutral bog;
- (iv) Circumneutral seep;
- (v) Cypress swamp;
- (vi) Dune and swale;
- (vii) Fen;
- (viii) Forested fen;

- 1 (ix) Forested swamp:
- 2 (x) Marl beach:
- 3 (xi) Muck flat:
- 4 (xii) Panne:
- 5 (xiii) Sand flat:
- 6 (xiv) Sedge meadow:
- 7 (xv) Shrub swamp:
- 8 (xvi) Sinkhole pond:
- 9 (xvii) Sinkhole swamp:
- 10 (xviii) Wet floodplain forest:
- 11 (xix) Wet prairie:
- 12 (xx) Wet sand prairie:

13 (b) For purposes of this section, a wetland or setting is not
 14 considered disturbed or affected as a result of an action taken after
 15 January 1, 2004, for which a permit is required under IC 13-18-22 but
 16 has not been obtained.

17 SECTION 3. IC 13-11-2-36.3 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 36.3. "Compensatory
 19 mitigation", for purposes of IC 13-18-22, means the:

- 20 (1) restoration; or
 - 21 (2) creation;
- 22 of wetlands to offset or compensate for a loss of wetlands resulting
 23 from an authorized wetland activity. Wetlands enlargement,
 24 enhancement, and preservation may be considered compensatory
 25 mitigation on a case-by-case basis, particularly for Class III wetlands.

26 SECTION 4. IC 13-11-2-48.5 IS REPEALED [EFFECTIVE JULY
 27 1, 2024]. Sec. 48.5: (a) "Cropland", for purposes of IC 13-18-22-1(d),
 28 means farmland:

- 29 (1) that is cultivated for agricultural purposes; and
 - 30 (2) from which crops are harvested.
- 31 (b) The term includes:
- 32 (1) orchards;
 - 33 (2) farmland used to produce row crops, close-grown crops, or
 34 cultivated hay; and
 - 35 (3) farmland intentionally kept out of production during a regular
 36 growing season (summer fallow).

37 (c) The term does not include pasture land unless the pasture land
 38 is in active rotation with cultivated crops for purposes of soil
 39 maintenance or improvement.

40 SECTION 5. IC 13-11-2-61.2 IS ADDED TO THE INDIANA
 41 CODE AS A NEW SECTION TO READ AS FOLLOWS
 42 [EFFECTIVE JULY 1, 2024]: Sec. 61.2. (a) "Dune and swale", for
 43 purposes of IC 13-18-22, means an ecological system consisting of
 44 a mixture of:

- 45 (1) upland natural communities, including:
- 46 (A) black oak sand savanna; or

- 1 **(B) dry to mesic sand prairie; and**
 2 **(2) wet prairie natural communities, including a:**
 3 **(A) pond;**
 4 **(B) panne;**
 5 **(C) sedge meadow;**
 6 **(D) marsh; or**
 7 **(E) wet prairie;**
 8 **that occurs in long, narrow, linear complexes, with the dry**
 9 **communities occupying sand ridges and the wet communities**
 10 **occurring in the intervening swales.**
 11 **(b) The following are found in the swales:**
 12 **(1) Black oak (*Quercus velutina*).**
 13 **(2) Paper birch (*Betula papyrifera*).**
 14 **(3) Jack pine (*Pinus banksiana*).**
 15 **(4) Prairie vegetation.**
 16 **(5) Sedges.**
 17 **(6) Reeds.**
 18 **(c) Dune and swale is restricted to extreme northwest Indiana,**
 19 **near Lake Michigan.**
 20 SECTION 6. IC 13-11-2-66.6 IS ADDED TO THE INDIANA
 21 CODE AS A NEW SECTION TO READ AS FOLLOWS
 22 [EFFECTIVE JULY 1, 2024]: **Sec. 66.6. "Emergent wetland", for**
 23 **purposes of IC 13-18-22, means a wetland that:**
 24 **(1) is dominated by woody plants less than three and**
 25 **twenty-eight hundredths (3.28) feet tall;**
 26 **(2) contains erect and rooted herbaceous hydrophytes,**
 27 **excluding mosses and lichens; or**
 28 **(3) has a combination of plants described in subdivisions (1)**
 29 **and (2);**
 30 **that are present for most of the growing season.**
 31 SECTION 7. IC 13-11-2-72.4 IS REPEALED [EFFECTIVE JULY
 32 1, 2024]. **Sec. 72.4. "Ephemeral stream", for purposes of**
 33 **IC 13-18-22-1(b)(6), means surface water flowing or pooling only in**
 34 **direct response to precipitation such as rain or snowfall."**
 35 Page 4, line 16, reset in roman "IC 13-18-22-6(e);".
 36 Page 4, line 16, delete "IC 13-18-22-6(g);".
 37 Page 4, delete lines 39 through 42, begin a new line block indented
 38 and insert:
 39 ~~"(5) is a Class I wetland;~~
 40 **(6) subject to subsection (c), is a Class II wetland with an area, as**
 41 **delineated, of not more than three-eighths (3/8) acre;**
 42 ~~(7) (5) is located on land:~~
 43 **(A) subject to regulation under United States Department of**
 44 **Agriculture wetland conservation programs, including**
 45 **Swampbuster and the Wetlands Reserve Program, because of**
 46 **voluntary enrollment in a federal farm program; and**

- 1 (B) used for agricultural or other purposes allowed under the
- 2 programs referred to in clause (A); ~~or~~ **and**
- 3 **(C) has not been converted to another land use, including**
- 4 **from one type of farming use to another; or**
- 5 ~~(8)~~ **(6)** is constructed for reduction or control of pollution.
- 6 (b) For purposes of subsection (a)(2), an isolated wetland exists as
- 7 an incidental feature:
- 8 (1) if:
- 9 **(A) the isolated wetland results inadvertently from a use of**
- 10 **the land;**
- 11 **(B) the isolated wetland is not within the land's normal**
- 12 **circumstances as defined by the Wetlands Delineation**
- 13 **Manual, Technical Report Y-87-1 of the United States**
- 14 **Army Corps of Engineers; and**
- 15 ~~(A)~~ the owner or operator of the property or facility described
- 16 in subsection (a)(2) does not intend the isolated wetland to be
- 17 a wetland;
- 18 ~~(B)~~ the isolated wetland is not essential to the function or use
- 19 of the property or facility; and
- 20 (C) the isolated wetland arises spontaneously as a result of
- 21 damp soil conditions incidental to the function or use of the
- 22 property or facility; and
- 23 (2) if the isolated wetland satisfies any other factors or criteria
- 24 established in rules that are:
- 25 (A) adopted by the board; and
- 26 (B) not inconsistent with the factors and criteria described in
- 27 subdivision (1).
- 28 (c) The total acreage of Class II wetlands on a tract to which the
- 29 exemption described in subsection (a)(6) may apply is limited to the
- 30 larger of:
- 31 (1) the acreage of the largest individual isolated wetland on the
- 32 tract that qualifies for the exemption described in subsection
- 33 (a)(6); and
- 34 (2) sixty percent (60%) of the cumulative acreage of all individual
- 35 isolated wetlands on the tract that would qualify for the exemption
- 36 described in subsection (a)(6) but for the limitation of this
- 37 subsection.
- 38 (d) An isolated wetland described in subsection (a)(5) or (a)(6) does
- 39 not include an isolated wetland on a tract that contains more than one
- 40 (1) of the same class of wetland until the owner of the tract notifies the
- 41 department that the owner has selected the isolated wetland to be an
- 42 exempt isolated wetland under subsection (a)(5) or (a)(6):".
- 43 Delete pages 5 through 13.
- 44 Page 14, delete lines 1 through 36, begin a new paragraph and
- 45 insert:
- 46 "SECTION 11. IC 13-11-2-77.5 IS ADDED TO THE INDIANA

1 CODE AS A NEW SECTION TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 2024]: **Sec. 77.5. "Farmed wetland", for**
 3 **purposes of IC 13-18-22, means a wetland where:**

4 (1) the soil surface of the wetland has been:

5 (A) mechanically;

6 (B) chemically; or

7 (C) physically;

8 altered for production of crops;

9 (2) indicators of hydric soil and wetland hydrology are
 10 present; and

11 (3) hydrophytes would reestablish if the crop farming were
 12 discontinued.

13 SECTION 12. IC 13-11-2-79.3 IS ADDED TO THE INDIANA
 14 CODE AS A NEW SECTION TO READ AS FOLLOWS
 15 [EFFECTIVE JULY 1, 2024]: **Sec. 79.3. (a) "Fen" for purposes of**
 16 **IC 13-18-22, means a wetland ecosystem typically characterized**
 17 **by:**

18 (1) near constant inundation by mineral-rich ground water;

19 (2) accumulation of peat; and

20 (3) alkaline or circum-neutral soils.

21 (b) Fens typically include some combination of the following
 22 types of plants:

23 (1) *Potentilla fruticosa*.

24 (2) *Physocarpus opulifolius*.

25 (3) *Cornus stolonifera*.

26 (4) *Betula pumila*.

27 (5) *Carex sterilis*.

28 (6) *Eleocharis* spp.

29 (7) *Filipendula rubra*.

30 (8) *Parnassia glauca*.

31 (9) *Solidago ohioensis*.

32 (10) *Solidago riddellii*.

33 (11) *Cirsium muticum*.

34 (12) *Lobelia kalmia*.

35 (13) *Aster puniceus*.

36 (14) *Gentianopsis procera*.

37 (15) *Gentiana crinita*.

38 (16) *Cacalia* spp.

39 (17) *Pedicularis lanceolatus*.

40 (18) *Selaginella apoda*.

41 (19) *Zizia aurea*.

42 (20) *Symplocarpus foetidus*.

43 (21) *Caltha palustris*.

44 (22) *Liatris* spp.

45 (23) *Andropogon gerardii* or *schizachyrium scoparium*.

46 (24) *Carex stricta*.

- 1 **(25) Pycnanthemum virginianum.**
 2 **(26) Rudbeckia fulgida.**
 3 **(27) Acer rubrum.**
 4 **(28) Fraxinus nigra.**
 5 **(29) Larix laricina.**
 6 **(30) Thuja occidentalis.**
 7 **(c) Fens can be found in central and northern Indiana.**
 8 SECTION 13. IC 13-11-2-85.8 IS ADDED TO THE INDIANA
 9 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 10 [EFFECTIVE JULY 1, 2024]: **Sec. 85.8. "Forested wetland", for**
 11 **purposes of IC 13-18-22, is a wetland dominated by woody plants**
 12 **three (3) inches or more in diameter at breast height regardless of**
 13 **height.**
 14 SECTION 14. IC 13-11-2-178.3 IS ADDED TO THE INDIANA
 15 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 16 [EFFECTIVE JULY 1, 2024]: **Sec. 178.3. "Rare and unique**
 17 **wetlands", for purposes of IC 13-18-22, means:**
 18 **(1) dune and swale;**
 19 **(2) sinkhole swamp;**
 20 **(3) fen; and**
 21 **(4) bog.**
 22 SECTION 15. IC 13-11-2-196.7 IS ADDED TO THE INDIANA
 23 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 24 [EFFECTIVE JULY 1, 2024]: **Sec. 196.7. "Scrub-shrub wetland",**
 25 **for purposes of IC 13-18-22, means a wetland that is dominated by**
 26 **tree saplings, bushes, shrubs, and other woody vegetation less than**
 27 **three (3) inches in diameter at breast height and greater than three**
 28 **and twenty-eight hundredths (3.28) feet tall.**
 29 SECTION 16. IC 13-11-2-202.9 IS ADDED TO THE INDIANA
 30 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 31 [EFFECTIVE JULY 1, 2024]: **Sec. 202.9. (a) "Sinkhole swamp", for**
 32 **purposes of IC 13-18-22, means a wetland ecosystem located in**
 33 **depressions in karst topography.**
 34 **(b) Sinkhole swamps are found in the Mitchell Karst Plain in**
 35 **south-central Indiana.**
 36 SECTION 17. IC 13-11-2-265.8, AS AMENDED BY P.L.160-2021,
 37 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2024]: **Sec. 265.8. For purposes of this chapter and**
 39 **IC 13-18-22:**
 40 **(1) "wetlands delineation" or "delineation" means a technical**
 41 **assessment:**
 42 **(A) of whether a wetland exists on an area of land; and**
 43 **(B) if so, of the type and ~~quality~~ boundary of the wetland**
 44 **based on the presence or absence of wetlands characteristics,**
 45 **as determined consistently with the Wetlands Delineation**
 46 **Manual, Technical Report Y-87-1 of the United States Army**

1 Corps of Engineers and the appropriate regional
2 supplement; and

3 (2) the term "delineated" describes property that has undergone
4 wetlands delineation.

5 SECTION 18. IC 13-18-22-1, AS AMENDED BY P.L.247-2023,
6 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2024]: Sec. 1. (a) The following definitions apply in this
8 section:

9 (1) "Cultivating" means physical methods of soil treatment
10 employed within established farming, ranching, and
11 silviculture lands on farm, ranch, or forest crops to aid and
12 improve their:

- 13 (A) growth;
- 14 (B) quality; or
- 15 (C) yield.

16 (2) "Harvesting" means physical measures employed directly
17 upon farm, forest, or ranch crops within established
18 agricultural and silvicultural lands to bring about their
19 removal from farm, forest, or ranch land, but does not include
20 the construction of farm, forest, or ranch roads.

21 (3) "Minor drainage" is limited to drainage within areas that
22 are part of an established farming or silviculture operation,
23 and include the discharge of dredged or fill material:

- 24 (A) incidental to connecting upland drainage facilities to
25 waters of Indiana, adequate to effect the removal of excess
26 soil moisture from upland croplands;
- 27 (B) for the purpose of installing ditching or other such
28 water control facilities incidental to planting, cultivating,
29 protecting, or harvesting of wetland crop species, where
30 these activities and the discharge occur in waters of
31 Indiana, which are in established use for such agricultural
32 and silvicultural wetland crop production;
- 33 (C) for the purpose of manipulating the water levels of, or
34 regulating the flow or distribution of water within, existing
35 impoundments that have been constructed in accordance
36 with applicable requirements of the Clean Water Act and
37 the Indiana Code, and which are in established use for the
38 production of wetland crop species; or
- 39 (D) incidental to the emergency removal of sandbars,
40 gravel bars, or other similar blockages that are formed
41 during flood flows or other events, where the blockages
42 close or constrict previously existing drainageways and, if
43 not promptly removed, would result in damage to or loss
44 of existing crops or would impair or prevent the plowing,
45 seeding, harvesting, or cultivating of crops on land in
46 established use for crop production. Such removal does not

1 include enlarging or extending the dimensions of, or
 2 changing the bottom elevations of, the affected
 3 drainageway as it existed before the formation of the
 4 blockage. Removal must be accomplished within one (1)
 5 year of discovery of the blockages in order to be eligible for
 6 the exception.

7 The term does not include a drainage associated with the
 8 immediate or gradual conversion of a wetland to a
 9 nonwetland, a conversion from one (1) wetland use to another
 10 (such as farming to silviculture), or the construction of any
 11 canal, ditch, dike, or any other waterway or structure that
 12 drains or otherwise significantly modifies a stream, lake,
 13 wetland, or aquatic area constituting a water of Indiana. Any
 14 discharge of dredged or fill material into the waters of
 15 Indiana incidental to the construction of any such structure or
 16 waterway, requires a permit.

17 (4) "Plowing" means all forms of primary tillage, including
 18 moldboard, chisel, or wide-blade plowing, discing, harrowing
 19 and similar physical means used on farm, forest, or ranch
 20 land for the breaking up, cutting, turning over, or stirring of
 21 soil to prepare it for the planting of crops. The term does not
 22 include:

23 (A) the redistribution of soil, rock, sand, or other surficial
 24 materials in a manner that changes any area of the waters
 25 of Indiana to dry land;

26 (B) rock crushing activities, which result in the loss of
 27 natural drainage characteristics, the reduction of water
 28 storage and recharge capabilities, or the overburden of
 29 natural water filtration capacities; or

30 (C) the discharge of dredged or fill material.

31 (5) "Seeding" means the sowing of seed and placement of
 32 seedlings to produce farm, ranch, or forest crops and includes
 33 the placement of soil beds for seeds or seedlings on established
 34 farm and forest lands.

35 (a) (b) Except as provided in subsection (b); (c), a person proposing
 36 a wetland activity in a state regulated wetland must obtain a permit
 37 under this chapter to authorize the wetland activity.

38 (b) (c) A permit is not required for the following wetland activities:

39 (1) The discharge of dirt, sand, rock, stone, concrete, or other
 40 inert fill materials in a de minimis amount.

41 (2) A wetland activity at a surface coal mine for which the
 42 department of natural resources has approved a plan to:

43 (A) minimize, to the extent practical using best technology
 44 currently available, disturbances and adverse effects on fish
 45 and wildlife;

46 (B) otherwise effectuate environmental values; and

- 1 (C) enhance those values where practicable.
- 2 (3) Any activity listed under Section 404(f) of the Clean Water
- 3 Act, including:
- 4 (A) normal farming, silviculture, and ranching activities, such
- 5 as plowing, seeding, cultivating, minor drainage, harvesting
- 6 for the production of food, fiber, and forest products, or upland
- 7 soil and water conservation practices **occurring at an**
- 8 **established and ongoing farming, silviculture, or ranching**
- 9 **operation;**
- 10 (B) maintenance, including emergency reconstruction of
- 11 recently damaged parts, of currently serviceable structures
- 12 such as dikes, dams, levees, groins, riprap, breakwaters,
- 13 causeways, and bridge abutments or approaches, and
- 14 transportation structures;
- 15 (C) construction or maintenance of farm or stock ponds or
- 16 irrigation ditches, or the maintenance of drainage ditches;
- 17 (D) construction of temporary sedimentation basins on a
- 18 construction site that does not include placement of fill
- 19 material into the navigable waters; and
- 20 (E) construction or maintenance of farm roads or forest roads,
- 21 or temporary roads for moving mining equipment, where the
- 22 roads are constructed and maintained, in accordance with best
- 23 management practices, to assure that:
- 24 (i) flow and circulation patterns and chemical and biological
- 25 characteristics of the navigable waters are not impaired;
- 26 (ii) the reach of the navigable waters is not reduced; and
- 27 (iii) any adverse effect on the aquatic environment will be
- 28 otherwise minimized.
- 29 (4) The maintenance or reconstruction (as defined in
- 30 IC 36-9-27-2) of a regulated drain in accordance with
- 31 IC 36-9-27-29(2) as long as the work takes place within the
- 32 current easement, and the reconstruction does not substantially
- 33 change the characteristics of the drain to perform the function for
- 34 which it was designed and constructed.
- 35 (5) Wetland activities in an exempt isolated wetland, as defined
- 36 in IC 13-11-2-74.5.
- 37 ~~(6) Dredge and fill activities in an ephemeral stream, as defined~~
- 38 ~~in IC 13-11-2-72.4.~~
- 39 ~~(7) Dredge and fill activities in a Class H wetland that:~~
- 40 ~~(A) is located within the boundaries of a municipality; and~~
- 41 ~~(B) has an area, as delineated, of not more than three-fourths~~
- 42 ~~(3/4) acre.~~
- 43 ~~(8) (6) The activities of a forestry operation that are:~~
- 44 ~~(A) conducted in compliance with the Indiana Logging and~~
- 45 ~~Forestry Best Management Practices Field Guide published by~~
- 46 ~~the department of natural resources; and~~

1 (B) confined to a waterway that has a watershed not greater
2 than ten (10) square miles.

3 A state permit will be required if there are permanent negative
4 impacts to isolated wetlands outside of a waterway or the
5 activities conducted fail to comply with the Indiana Logging and
6 Forestry Best Management Practices Field Guide.

7 (e) If a conflict arises between:
8 (1) the provision in subsection (b)(7) under which dredge and fill
9 activities in a Class H wetland with an area, as delineated, of not
10 more than three-fourths (3/4) acre do not require a permit; and
11 (2) the provision in section 3(a) of this chapter under which a
12 wetland activity in a Class H wetland with an area, as delineated,
13 of more than three-eighths (3/8) acre require an individual permit;
14 the exemption in subsection (b)(7) controls.

15 (d) The development of cropland, as defined in IC 13-11-2-48.5;
16 does not require a permit under this chapter if the cropland has been
17 used for agricultural purposes:

- 18 (1) in the five (5) years immediately preceding the development;
- 19 or
- 20 (2) in the ten (10) years immediately preceding the development;
21 if the United States Army Corps of Engineers has issued a
22 jurisdictional determination confirming that the cropland does not
23 contain wetlands subject to federal jurisdiction under Section 404
24 of the Clean Water Act.

25 After receiving a jurisdictional determination described in subdivision
26 (2) from the United States Army Corps of Engineers, the department
27 shall notify the person proposing the wetland activity that the
28 development of the cropland used for agricultural purposes in the
29 immediately preceding ten (10) years is exempt from the permit
30 requirement of subsection (a) under subdivision (2).

31 SECTION 19. IC 13-18-22-2, AS AMENDED BY P.L.2-2005,
32 SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
33 JULY 1, 2024]: Sec. 2. (a) The board may adopt rules under IC 4-22-2
34 and IC 13-14 **not later than July 1, 2025.** not later than February 1,
35 2005, to implement the part of the definition of Class I wetland under
36 IC 13-11-2-25.8(a)(1)(B).

37 (b) Before the adoption of rules by the board under subsection (a);
38 the department shall determine the class of a wetland in a manner
39 consistent with the definitions of Class I, H, and HH wetlands in
40 IC 13-11-2-25.8.

41 (c) The classification of an isolated wetland that is based on the
42 level of disturbance of the wetland by human activity or development
43 may be improved to a higher numeric class if an action is taken to
44 restore the isolated wetland, in full or in part, to the conditions that
45 existed on the isolated wetland before the disturbance occurred.

46 SECTION 20. IC 13-18-22-3, AS AMENDED BY P.L.160-2021,

1 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2024]: Sec. 3. (a) The following shall be authorized by an
3 individual permit:

4 ~~(1) Wetland activity in a Class H wetland with an area, as~~
5 ~~delineated, of more than three-eighths (3/8) acre. This subdivision~~
6 ~~does not apply to the maintenance of a field tile within a Class H~~
7 ~~wetland under section 4(a)(1).~~

8 ~~(2) Wetland activity in a Class HH wetland:~~

9 ~~(1) Activities in wetlands that cause a combined impact of~~
10 ~~greater than or equal to one-half (1/2) acre in size to wetlands.~~

11 ~~(2) Any impact to a rare and unique wetland (as defined in~~
12 ~~IC 13-11-2-178.3) of any size.~~

13 (b) The board shall adopt rules under IC 4-22-2 and IC 13-14 to
14 govern the issuance of individual permits by the department under
15 subsection (a).

16 SECTION 21. IC 13-18-22-4, AS AMENDED BY P.L.160-2021,
17 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 JULY 1, 2024]: Sec. 4. (a) The following shall be authorized by a
19 general permit:

20 ~~(1) The maintenance of a field tile within a Class H wetland:~~
21 ~~However, the maintenance described in this subdivision may be~~
22 ~~authorized only if the field tile:~~

23 ~~(A) is necessary to restore drainage of land adjacent to the~~
24 ~~wetland; and~~

25 ~~(B) does not have the effect of draining the wetland:~~

26 ~~(2) The maintenance of a field tile within a Class HH wetland:~~
27 ~~However, the maintenance described in this subdivision may be~~
28 ~~authorized only if:~~

29 ~~(A) the maintenance of the field tile:~~

30 ~~(i) is necessary to restore drainage of land adjacent to the~~
31 ~~wetland; and~~

32 ~~(ii) does not have the effect of draining the wetland; and~~

33 ~~(B) the applicant obtains a site-specific approval for the~~
34 ~~maintenance of the field tile under section 12 of this chapter:~~

35 ~~(b) The maintenance of a field tile in a Class I wetland does not~~
36 ~~require a permit:~~

37 ~~(1) Activities in wetlands that cause a combined impact of less~~
38 ~~than one-half (1/2) an acre in size to wetlands.~~

39 ~~(2) The wetland is not a rare and unique wetland (as defined~~
40 ~~in IC 13-11-2-178.3).~~

41 ~~(c) (b) The board shall adopt rules under IC 4-22-2 and IC 13-14 to~~
42 ~~establish and implement the general permits described in subsection~~
43 ~~(a).~~

44 SECTION 22. IC 13-18-22-5 IS AMENDED TO READ AS
45 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 5. (a) The rules adopted
46 **for the issuance of individual permits** under section 3 of this chapter:

- 1 (1) must require that the applicant demonstrate, as a prerequisite
- 2 to the issuance of the permit, that wetland activity:
- 3 (A) is:
- 4 (i) without reasonable alternative; and
- 5 (ii) reasonably necessary or appropriate;
- 6 to achieve a legitimate use proposed by the applicant on the
- 7 property on which the wetland is located; and
- 8 (B) for a ~~Class III wetland~~ **rare or unique wetland**, is without
- 9 practical alternative and will be accompanied by taking steps
- 10 that are practicable and appropriate to minimize potential
- 11 adverse impacts of the discharge on the aquatic ecosystem of
- 12 the wetland;
- 13 (2) ~~except as provided in subsection (c);~~ must establish that
- 14 **efforts were taken to avoid and minimize impacts, and**
- 15 compensatory mitigation will be provided as set forth in section
- 16 6 of this chapter to reasonably offset the loss of wetlands allowed
- 17 by the permits; and
- 18 (3) may prescribe additional conditions that are reasonable and
- 19 necessary to carry out the purposes of this chapter.
- 20 (b) The rules adopted **for the issuance of general permits** under
- 21 section 4 of this chapter must require, as a prerequisite to the
- 22 applicability of the general permit by rule to a specific wetland activity,
- 23 that the person proposing the discharge submit to the department a
- 24 notice of intent to be covered by the general permit by rule that:
- 25 (1) identifies the wetlands to be affected by the wetland activity;
- 26 and
- 27 (2) ~~except as provided in subsection (c);~~ provides a compensatory
- 28 mitigation plan as set forth in section 6 of this chapter to
- 29 reasonably offset the loss of wetlands allowed by the general
- 30 permit.
- 31 (c) ~~Under subsections (a) and (b); the rules adopted under sections~~
- 32 ~~3 and 4 of this chapter may provide for exceptions to compensatory~~
- 33 ~~mitigation in specific, limited circumstances:~~
- 34 (d) For purposes of subsection (a)(1)(A):
- 35 (1) a resolution of the executive of the county or municipality in
- 36 which the wetland is located; or
- 37 (2) a permit or other approval from a local government entity
- 38 having authority over the proposed use of the property on which
- 39 the wetland is located;
- 40 that includes a specific finding that the wetland activity is as described
- 41 in subsection (a)(1)(A) is considered conclusive evidence of that fact.
- 42 SECTION 23. IC 13-18-22-6, AS AMENDED BY P.L.160-2021,
- 43 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 44 JULY 1, 2024]: Sec. 6. (a) Except as otherwise specified in subsections
- 45 (b) and (c), compensatory mitigation **for unavoidable wetland**
- 46 **impacts** shall be provided in accordance with the following table:

1	Wetland	Replacement	On-site and	Off-site
2	Class	Class	In-lieu Fee	Ratio
3			Ratio	
4	Class II	Class II or III	1.5 to 1	2 to 1
5			Nonforested	Nonforested
6			2 to 1	2.5 to 1
7			Forested	Forested
8	Class III	Class III	2 to 1	2.5 to 1
9			Nonforested	Nonforested
10			2.5 to 1	3 to 1
11			Forested	Forested

12 (b) The compensatory mitigation ratio shall be lowered to one to one
 13 (1:1) if the compensatory mitigation is completed before the initiation
 14 of the wetland activity.

15 (c) A wetland that is created or restored as a water of the United
 16 States may be used, as an alternative to the creation or restoration of an
 17 isolated wetland, as compensatory mitigation for purposes of this
 18 section. The replacement class of a wetland that is a water of the
 19 United States shall be determined by applying the characteristics of a
 20 Class I, Class II, or Class III wetland, as appropriate, to the replacement
 21 wetland as if it were an isolated wetland.

22 **Wetland Type Ratio**

23 **Farmed 1:1**

24 **Emergent/scrub-shrub 2:1**

25 **Forested 2.5:1**

26 **Bogs/fens/dune swale/
 27 sinkhole wetland 10:1**

28 (b) Impacts to less than one-tenth (0.1) acre of a wetland do not
 29 require compensatory mitigation.

30 (c) The permittee's compensatory mitigation requirements shall
 31 occur in accordance with the standards and guidelines set forth in
 32 33 CFR 332 and through the use of one (1) or more of the following
 33 mechanisms set forth in order of preference:

34 (1) A mitigation bank (as defined in 33 CFR 332).

35 (2) The Indiana stream and wetland mitigation program.

36 (3) Permittee-responsible mitigation in accordance with
 37 subsection (d).

38 (d) The off-site location of compensatory mitigation must be:

39 (1) within:

40 (A) the same eight (8) digit U.S. Geological Service hydrologic
 41 unit code; or

42 (B) the same county;

43 as the isolated wetlands subject to the authorized wetland activity;
 44 or

45 (2) within a designated service area established in an in lieu fee
 46 mitigation program approved by the United States Army Corps of

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Engineers:
(d) The permittee-responsible location of compensatory mitigation must be within the same Indiana stream and wetland mitigation program service area.

(e) Exempt isolated wetlands may be used to provide compensatory mitigation for wetlands activities in state regulated wetlands. An exempt isolated wetland that is used to provide compensatory mitigation becomes a state regulated wetland.

(f) Violations of this section shall require an application for an after-the-fact permit and increased mitigation ratios not less than double the ratios specified in subsection (a).

SECTION 24. IC 13-18-22-7, AS AMENDED BY P.L.160-2021, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 7. (a) The department shall:

- (1) administer the permit programs established by this chapter; **and**
- (2) review and issue decisions on applications for permits to undertake wetland activities in state regulated wetlands in accordance with the rules issued by the board under this chapter; **and**
- (3) coordinate with the department of natural resources before issuing a decision for a permit for wetland activity to an applicant.**

(b) The department shall make available to the public a form for use in applying for a permit under this chapter.

(c) Before the issuance of a permit under this chapter, the department shall publish public notice of the receipt of an application for a state regulated wetland individual or general permit. The public notice shall also provide information about how to access the application, where to submit public comments on the application, and the inclusive dates of the comment period, which shall be not less than thirty (30) days.

(d) The department shall serve notice to adjacent property owners, other state and federal agencies, and any person who has requested to receive public notices for state regulated individual or general wetland permit applications.

(e) The department shall not make any agency decision on the application until the thirty (30) day public notice and comment period has expired and all comments have been addressed.

SECTION 25. IC 13-18-22-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 9. (a) The owner of a ~~Class III~~ wetland may petition the board for designation of the wetland as an outstanding state protected wetland. Upon verification by the board that the ~~wetland~~ is a ~~Class III wetland~~ and that the petitioner is the owner of the wetland, the board shall conduct a proceeding under IC 4-22-2 and IC 13-14 to adopt a rule designating the wetland as an

- 1 outstanding state protected wetland.
- 2 (b) A rule adopted by the board under subsection (a) must
- 3 specifically identify each wetland to be designated as an outstanding
- 4 state protected wetland, including:
- 5 (1) the wetland type;
- 6 (2) a legal description of the wetland as delineated; and
- 7 (3) other information considered necessary by the board.
- 8 (c) The owner of a ~~Class H~~ wetland designated as an outstanding
- 9 state protected wetland under this section shall:
- 10 (1) not cause or allow any anthropogenic activities on the property
- 11 on which the wetland is located that may adversely affect or
- 12 degrade the wetland, except for activities with minimal and short
- 13 term effect, such as construction of an observation pathway or
- 14 installation of an underground pipeline that are:
- 15 (A) authorized by rules adopted by the board; or
- 16 (B) approved by the department in the absence of rules under
- 17 clause (A); and
- 18 (2) provide for the long term assurance of the protections
- 19 described in subdivision (1) through:
- 20 (A) a restrictive covenant that is recorded with respect to the
- 21 property on which the delineated wetland is located; or
- 22 (B) a grant of title to or a conservation easement in the property
- 23 on which the delineated wetland is located to:
- 24 (i) the department of natural resources; or
- 25 (ii) a nonprofit entity with demonstrated ability in the
- 26 maintenance and protection of wetlands.
- 27 (d) Notwithstanding the designation of a wetland under this section
- 28 by the board as an outstanding state protected wetland, the owner of a
- 29 ~~Class H~~ wetland may petition the board for rescission of the
- 30 designation if the owner can demonstrate important social or economic
- 31 needs that warrant adverse effects to the wetland. In its review of the
- 32 petition, the board shall give great weight to a resolution of the
- 33 legislative body of the municipality or county in which the ~~Class H~~
- 34 wetland is located describing important social or economic needs, the
- 35 accomplishment of which would necessitate adverse effects to the
- 36 wetland.
- 37 SECTION 26. IC 13-18-22-11 IS AMENDED TO READ AS
- 38 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 11. When land referred
- 39 to in ~~IC 13-11-2-74.5(a)(7)~~ **IC 13-11-2-74.5(a)(5)** is no longer subject
- 40 to United States Department of Agriculture wetland conservation rules:
- 41 (1) isolated wetlands located on the land are subject to this
- 42 chapter; and
- 43 (2) any past wetland activities in the isolated wetlands located on
- 44 the land become subject to this chapter unless the wetland
- 45 activities were in compliance with United States Department of
- 46 Agriculture wetland conservation rules.

1 SECTION 27. IC 13-18-22-12 IS REPEALED [EFFECTIVE JULY
2 1, 2024]. Sec. 12: (a) A person seeking to engage in maintenance of a
3 field tile within a Class III wetland under section 4(a)(2) of this chapter
4 may apply to the department for a site-specific approval for the activity
5 in accordance with this section and the rules adopted under section 4(c)
6 of this chapter.
7 (b) An applicant for a site-specific approval under this section must
8 provide information to the department on the need to perform the
9 activity described in subsection (a); including the following:
10 (1) Information showing the location and area needed to be
11 disturbed within the Class III wetland;
12 (2) Lack of reasonable alternatives to the disturbance of the area
13 referred to in subdivision (1)".
14 Renumber all SECTIONS consecutively.
 (Reference is to EHB 1383 as printed February 2, 2024.)

Senator YODER