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FISCAL IMPACT STATEMENT

LS 7033

BILL NUMBER: HB 1383

NOTE PREPARED: Feb 7, 2024

BILL AMENDED: Jan 18, 2024

SUBJECT: Wetlands.

FIRST AUTHOR: Rep. Morrison

FIRST SPONSOR: Sen. Niemeyer

BILL STATUS: Enrolled

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: *Wetland Classifications and Permitting:* The bill clarifies various wetland definitions. It eliminates certain wetland rulemaking requirements. It provides that certain wetland activity requires state authorization.

Compensatory Mitigation: The bill clarifies the compensatory mitigation that must be offered to offset certain wetland activity.

It makes conforming changes and technical corrections.

Effective Date: July 1, 2024.

Explanation of State Expenditures: *Wetland Classifications and Permitting:* The bill eliminates the requirement for rulemaking regarding wetland permitting which would reduce the workload for the Environmental Rules Boards (ERB). The bill would have an indeterminate impact on the Department of Environmental Management (IDEM) workload. It allows for wetland general permits and individual permits, that currently require rules (adopted by the ERB), to be done administratively by IDEM according to statutory requirements. It also expands the activities authorized by a general permit.

It changes the definition of some state regulated wetlands, which could lower the classification of some Class III wetlands to Class II wetlands. This could reduce IDEM workload, as some activities in a Class III wetland that require an individual permit may be exempt from permitting or authorized by a general permit for a Class II wetland. Conversely, if exempt wetlands are enhanced or preserved, as allowed by the bill's compensatory mitigation provisions, they would become state regulated wetlands, which could increase IDEM's workload.

The bill would also increase workload and expenditures for IDEM as it requires all compensatory mitigation to be protected with a restrictive covenant with respect to the property. IDEM would need to file restrictive covenant documents with county recorders and pay document filing fees.

There is currently a permit exemption for dredge and fill activity in a Class II wetland that is not more than 3/4 acre within the boundary of a municipality. The bill expands the allowable activities but limits the exemption (to 60% of cumulative acreage) when more than one Class II wetland is present on a tract.

Additionally, state governmental entities may have a reduction in compensatory mitigation expenses for restoring or replacing wetland areas that are lost due to actions of the state governmental entity, if some wetland classifications are lowered.

Compensatory Mitigation: The bill may decrease workload for Department of Natural Resources (DNR) and the Natural Resources Foundation, a nonprofit subsidiary corporation of the DNR. The Natural Resources Foundation manages the sale of advance credits for the in-lieu fee program for those opting to purchase credits in lieu of performing mitigation. Upon sale of the mitigation credits, the responsibility for mitigation transfers to the DNR. Fewer in-lieu fee mitigation credits may be purchased as the bill provides additional options for compensatory mitigation. Conversely, if the in-lieu fee program is used to enhance exempt Class I wetlands to Class II wetlands, as allowed by the bill, workload could increase for the DNR.

The bill could also increase workload and expenditures for the DNR as it requires compensatory mitigation to be protected with a restrictive covenant with respect to the property, if that is not current practice. The DNR would need to file restrictive covenant documents with county recorders and pay document filing fees.

The bill replaces the reference to the U.S. Army Corps of Engineers' (USACE) approval for its compensatory mitigation in-lieu fee program, requiring IDEM to approve the program. This may not eliminate the federal requirement to receive USACE approval for the program.

Explanation of State Revenues: *Compensatory Mitigation and Wetland Classifications:* The bill may reduce revenue to the Natural Resources Foundation and the DNR if fewer in-lieu fee mitigation credits are purchased as a result of the bill's additional compensatory mitigation options. The Natural Resources Foundation receives revenue from the sale of advance credits for those opting to purchase the credits in lieu of performing the mitigation. The Natural Resources Foundation retains 2% of each credit sale as their administrative fee. Additionally, lowering the classification of some Class III wetlands to Class II wetlands could also reduce the amount of compensatory mitigation required. However, revenue could increase if the in-lieu fee program is used to enhance exempt Class I wetlands to nonexempt Class II wetlands, a compensatory mitigation option provided by the bill.

Explanation of Local Expenditures: *Wetland Classifications and Permitting:* If the bill causes wetlands to change in class level, then local governmental entities may have a reduction in compensatory mitigation expenses for restoring or replacing wetland areas that are lost due to actions of the local governmental entity.

Explanation of Local Revenues: *Compensatory Mitigation:* The bill requires compensatory mitigation to be protected with a restrictive covenant with respect to the property. County recorders may receive additional fees for the filing of these restrictive covenants.

State Agencies Affected: Department of Environmental Management; Department of Natural Resources; Environmental Rules Boards; Natural Resources Foundation; potentially all.

Local Agencies Affected: Local units; county recorders.

Information Sources: Drake Abramson, IDEM;

https://www.in.gov/idem/wetlands/files/state_regulated_guidance_class_determination.pdf;

<https://www.in.gov/idem/cleanups/investigation-and-cleanup-programs/institutional-controls/>;

<https://www.govinfo.gov/content/pkg/FR-2002-01-15/pdf/02-539.pdf>;

https://www.epa.gov/sites/default/files/2015-08/documents/in-lieu_fee_mitigation_guidance.pdf;

<https://www.in.gov/dnr/land-acquisition/stream-and-wetland-mitigation-program/in-lieu-fee-mitigation-program-how-it-works/>;

<https://www.in.gov/idem/wetlands/information-about/state-regulated-wetlands-program/understanding-state-regulated-wetland-exemptions/>.

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