

# HOUSE BILL No. 1383

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 13-11-2; IC 13-18-22.

**Synopsis:** Wetlands. Clarifies various wetland definitions. Eliminates certain wetland rulemaking requirements. Provides that certain wetland activity requires state authorization. Clarifies the compensatory mitigation that must be offered to offset certain wetland activity. Makes conforming changes and technical corrections.

**Effective:** July 1, 2024.

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## Morrison, Miller D, Wesco, Prescott

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January 11, 2024, read first time and referred to Committee on Environmental Affairs.

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Second Regular Session of the 123rd General Assembly (2024)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2023 Regular Session of the General Assembly.

# HOUSE BILL No. 1383



A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 13-11-2-25.8, AS AMENDED BY P.L.160-2021,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2024]: Sec. 25.8. (a) For purposes of IC 13-18:  
4 (1) "Class I wetland" means an isolated wetland described by one  
5 (1) or both of the following:  
6 (A) At least fifty percent (50%) of the wetland has been  
7 disturbed or affected by human activity or development by one  
8 (1) or more of the following:  
9 (i) Removal or replacement of the natural vegetation.  
10 (ii) Modification of the natural hydrology.  
11 (B) The wetland supports only minimal wildlife or aquatic  
12 habitat or hydrologic function because the wetland does not  
13 provide critical habitat for threatened or endangered species  
14 listed in accordance with the Endangered Species Act of 1973  
15 (16 U.S.C. 1531 et seq.) and the wetland is characterized by at  
16 least one (1) of the following:  
17 (i) The wetland is typified by low species diversity.



- 1 (ii) The wetland contains greater than fifty percent (50%)  
 2 areal coverage of non-native invasive species of vegetation.  
 3 (iii) The wetland does not support significant wildlife or  
 4 aquatic habitat.  
 5 (iv) The wetland does not possess significant hydrologic  
 6 function;
- 7 (2) "Class II wetland" means **one (1) of the following:**  
 8 **(A) An isolated wetland that supports moderate habitat or**  
 9 **hydrological functions, including an isolated wetland that is**  
 10 **dominated by native species but is generally without:**  
 11 ~~(A) (i) the presence of;~~ or  
 12 ~~(B) (ii) habitat for;~~  
 13 rare, threatened, or endangered species. ~~and~~  
 14 **(B) A type of wetland listed in subdivision (3)(B)(i) through**  
 15 **(3)(B)(vi) that:**  
 16 **(i) is located in a setting more than minimally disturbed**  
 17 **by human activity or development; or**  
 18 **(ii) supports less than minimal wildlife or aquatic habitat**  
 19 **or hydrologic function.**
- 20 (3) "Class III wetland" means an isolated wetland:  
 21 (A) that is ~~located in a setting undisturbed or minimally~~  
 22 ~~disturbed by human activity or development and that supports~~  
 23 ~~more than minimal wildlife or aquatic habitat or hydrologic~~  
 24 ~~function; at least one (1) of the following rare and~~  
 25 ~~ecologically important types:~~  
 26 **(i) Acid bog.**  
 27 **(ii) Acid seep.**  
 28 **(iii) Circumneutral bog.**  
 29 **(iv) Circumneutral seep.**  
 30 **(v) Cypress swamp.**  
 31 **(vi) Dune and swale.**  
 32 **(vii) Fen.**  
 33 **(viii) Forested fen.**  
 34 **(ix) Marl beach.**  
 35 **(x) Muck flat.**  
 36 **(xi) Panne.**  
 37 **(xii) Sand flat.**  
 38 **(xiii) Sinkhole pond.**  
 39 **(xiv) Sinkhole swamp; or**  
 40 **(B) that is located in a setting undisturbed or minimally**  
 41 **disturbed by human activity or development and that**  
 42 **supports more than minimal wildlife or aquatic habitat or**



- 1                    **hydrologic function and of that is at least one (1) of the**  
 2 following rare and ecologically important types:  
 3                    (i) Acid bog;  
 4                    (ii) Acid seep;  
 5                    (iii) Circumneutral bog;  
 6                    (iv) Circumneutral seep;  
 7                    (v) Cypress swamp;  
 8                    (vi) Dune and swale;  
 9                    (vii) Fen;  
 10                    (viii) Forested fen;  
 11                    (ix) (i) Forested swamp.  
 12                    (x) Marl beach;  
 13                    (xi) Muck flat;  
 14                    (xii) Panne;  
 15                    (xiii) Sand flat;  
 16                    (xiv) (ii) Sedge meadow.  
 17                    (xv) (iii) Shrub swamp.  
 18                    (xvi) Sinkhole pond;  
 19                    (xvii) Sinkhole swamp;  
 20                    (xviii) (iv) Wet floodplain forest.  
 21                    (xix) (v) Wet prairie.  
 22                    (xx) (vi) Wet sand prairie.

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

27                    (c) **A wetland shall be classified by the function of the wetland**  
 28 **prior to an impact if the impact:**

- 29                    (1) **lowered hydrology or habit function in the wetland; and**  
 30                    (2) **would result in a lower classification but for this**  
 31 **subsection.**

32                    SECTION 2. IC 13-11-2-48.5, AS ADDED BY P.L.160-2021,  
 33 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 34 JULY 1, 2024]: Sec. 48.5. (a) "Cropland", for purposes of  
 35 ~~IC 13-18-22-1(d)~~, **IC 13-18-22-1(c)**, means farmland:

- 36                    (1) that is cultivated for agricultural purposes; and  
 37                    (2) from which crops are harvested.

38                    (b) The term includes:

- 39                    (1) orchards;  
 40                    (2) farmland used to produce row crops, close-grown crops, or  
 41 cultivated hay; and  
 42                    (3) farmland intentionally kept out of production during a regular



growing season (summer fallow).

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

SECTION 3. IC 13-11-2-74.5, AS AMENDED BY P.L.160-2021, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 74.5. (a) "Exempt isolated wetland", for purposes of IC 13-18 and environmental management laws, means an isolated wetland that:

(1) is a voluntarily created wetland unless:

(A) the wetland is approved by the department for compensatory mitigation purposes in accordance with a permit issued under Section 404 of the Clean Water Act or IC 13-18-22;

(B) the wetland is reclassified as a state regulated wetland under ~~IC 13-18-22-6(e)~~; **IC 13-18-22-6(g)**; or

(C) the owner of the wetland declares, by a written instrument:

(i) recorded in the office of the recorder of the county or counties in which the wetland is located; and

(ii) filed with the department;

that the wetland is to be considered in all respects to be a state regulated wetland;

(2) exists as an incidental feature in or on:

(A) a residential lawn;

(B) a lawn or landscaped area of a commercial or governmental complex;

(C) agricultural land;

(D) a roadside ditch;

(E) an irrigation ditch; or

(F) a manmade drainage control structure;

(3) is a fringe wetland associated with a private pond;

(4) is, or is associated with, a manmade body of surface water of any size created by:

(A) excavating;

(B) diking; or

(C) excavating and diking;

dry land to collect and retain water for or incidental to agricultural, commercial, industrial, or aesthetic purposes;

(5) is a Class I wetland;

(6) subject to subsection (c), is a Class II wetland ~~with that~~:

**(A) is not located within the boundaries of a municipality, and has** an area, as delineated, of not more than three-eighths



- 1 (3/8) acre; or  
 2 **(B) is located within the boundaries of a municipality, and**  
 3 **has an area, as delineated, of not more than three-fourths**  
 4 **(3/4) acre;**  
 5 (7) is located on land:  
 6 (A) subject to regulation under United States Department of  
 7 Agriculture wetland conservation programs, including  
 8 Swampbuster and the Wetlands Reserve Program, because of  
 9 voluntary enrollment in a federal farm program; and  
 10 (B) used for agricultural or other purposes allowed under the  
 11 programs referred to in clause (A); or  
 12 (8) is constructed for reduction or control of pollution.  
 13 (b) For purposes of subsection (a)(2), an isolated wetland exists as  
 14 an incidental feature:  
 15 (1) if:  
 16 (A) the owner or operator of the property or facility described  
 17 in subsection (a)(2) does not intend the isolated wetland to be  
 18 a wetland;  
 19 (B) the isolated wetland is not essential to the function or use  
 20 of the property or facility; and  
 21 (C) the isolated wetland arises spontaneously as a result of  
 22 damp soil conditions incidental to the function or use of the  
 23 property or facility; and  
 24 (2) if the isolated wetland satisfies any other factors or criteria  
 25 established in rules that are:  
 26 (A) adopted by the board; and  
 27 (B) not inconsistent with the factors and criteria described in  
 28 subdivision (1).  
 29 (c) The total acreage of Class II wetlands on a tract to which the  
 30 exemption described in subsection (a)(6) may apply is limited to the  
 31 larger of:  
 32 (1) the acreage of the largest individual isolated wetland on the  
 33 tract that qualifies for the exemption described in subsection  
 34 (a)(6); and  
 35 (2) sixty percent (60%) of the cumulative acreage of all individual  
 36 isolated wetlands on the tract that would qualify for the exemption  
 37 described in subsection (a)(6) but for the limitation of this  
 38 subsection.  
 39 (d) An isolated wetland described in subsection (a)(5) or (a)(6) does  
 40 not include an isolated wetland on a tract that contains more than one  
 41 (1) of the same class of wetland until the owner of the tract notifies the  
 42 department that the owner has selected the isolated wetland to be an



1 exempt isolated wetland under subsection (a)(5) or (a)(6).

2 SECTION 4. IC 13-18-22-1, AS AMENDED BY P.L.247-2023,  
3 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 2024]: Sec. 1. (a) Except as provided in subsection (b), a  
5 person proposing a wetland activity in a state regulated wetland must  
6 obtain a permit under this chapter to authorize the wetland activity.

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

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

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

12 (A) minimize, to the extent practical using best technology  
13 currently available, disturbances and adverse effects on fish  
14 and wildlife;

15 (B) otherwise effectuate environmental values; and

16 (C) enhance those values where practicable.

17 (3) Any activity listed under Section 404(f) of the Clean Water  
18 Act, including:

19 (A) normal farming, silviculture, and ranching activities, such  
20 as plowing, seeding, cultivating, minor drainage, harvesting  
21 for the production of food, fiber, and forest products, or upland  
22 soil and water conservation practices;

23 (B) maintenance, including emergency reconstruction of  
24 recently damaged parts, of currently serviceable structures  
25 such as dikes, dams, levees, groins, riprap, breakwaters,  
26 causeways, and bridge abutments or approaches, and  
27 transportation structures;

28 (C) construction or maintenance of farm or stock ponds or  
29 irrigation ditches, or the maintenance of drainage ditches;

30 (D) construction of temporary sedimentation basins on a  
31 construction site that does not include placement of fill  
32 material into the navigable waters; and

33 (E) construction or maintenance of farm roads or forest roads,  
34 or temporary roads for moving mining equipment, where the  
35 roads are constructed and maintained, in accordance with best  
36 management practices, to assure that:

37 (i) flow and circulation patterns and chemical and biological  
38 characteristics of the navigable waters are not impaired;

39 (ii) the reach of the navigable waters is not reduced; and

40 (iii) any adverse effect on the aquatic environment will be  
41 otherwise minimized.

42 (4) The maintenance or reconstruction (as defined in



1 IC 36-9-27-2) of a regulated drain in accordance with  
 2 IC 36-9-27-29(2) as long as the work takes place within the  
 3 current easement, and the reconstruction does not substantially  
 4 change the characteristics of the drain to perform the function for  
 5 which it was designed and constructed.

6 (5) Wetland activities in an exempt isolated wetland, as defined  
 7 in IC 13-11-2-74.5.

8 (6) Dredge and fill activities in an ephemeral stream, as defined  
 9 in IC 13-11-2-72.4.

10 (7) ~~Dredge and fill activities in a Class H wetland that:~~

11 ~~(A) is located within the boundaries of a municipality; and~~

12 ~~(B) has an area, as delineated, of not more than three-fourths~~  
 13 ~~(3/4) acre.~~

14 ~~(8) (7) The activities of a forestry operation that are:~~

15 ~~(A) conducted in compliance with the Indiana Logging and~~  
 16 ~~Forestry Best Management Practices Field Guide published by~~  
 17 ~~the department of natural resources; and~~

18 ~~(B) confined to a waterway that has a watershed not greater~~  
 19 ~~than ten (10) square miles.~~

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

24 ~~(e) If a conflict arises between:~~

25 ~~(1) the provision in subsection (b)(7) under which dredge and fill~~  
 26 ~~activities in a Class H wetland with an area, as delineated, of not~~  
 27 ~~more than three-fourths (3/4) acre do not require a permit; and~~

28 ~~(2) the provision in section 3(a) of this chapter under which a~~  
 29 ~~wetland activity in a Class H wetland with an area, as delineated,~~  
 30 ~~of more than three-eighths (3/8) acre require an individual permit;~~

31 ~~the exemption in subsection (b)(7) controls.~~

32 ~~(d) (c) The development conversion~~ of cropland, as defined in  
 33 IC 13-11-2-48.5, **to housing** does not require a permit under this  
 34 chapter if the cropland has been used for agricultural purposes:

35 (1) in the five (5) years immediately preceding the development;  
 36 or

37 (2) in the ten (10) years immediately preceding the development,  
 38 if the United States Army Corps of Engineers has issued a  
 39 jurisdictional determination confirming that the cropland does not  
 40 contain wetlands subject to federal jurisdiction under Section 404  
 41 of the Clean Water Act.

42 After receiving a jurisdictional determination described in subdivision





1 (2) from the United States Army Corps of Engineers, the department  
 2 shall notify the person proposing the wetland activity that the  
 3 development of the cropland used for agricultural purposes in the  
 4 immediately preceding ten (10) years is exempt from the permit  
 5 requirement of subsection (a) under subdivision (2).

6 SECTION 5. IC 13-18-22-2, AS AMENDED BY P.L.2-2005,  
 7 SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 8 JULY 1, 2024]: Sec. 2. ~~(a) The board may adopt rules under IC 4-22-2~~  
 9 ~~and IC 13-14 not later than February 1, 2005, to implement the part of~~  
 10 ~~the definition of Class I wetland under IC 13-11-2-25.8(a)(1)(B):~~

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

15 ~~(c) The classification of an isolated wetland that is based on the~~  
 16 ~~level of disturbance of the wetland by human activity or development~~  
 17 ~~may be improved to a higher numeric class if an action is taken to~~  
 18 ~~restore the isolated wetland, in full or in part, to the conditions that~~  
 19 ~~existed on the isolated wetland before the disturbance occurred.~~

20 SECTION 6. IC 13-18-22-3, AS AMENDED BY P.L.160-2021,  
 21 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 22 JULY 1, 2024]: Sec. 3. (a) The following shall be authorized by an  
 23 individual permit:

24 (1) Wetland activity in a **nonexempt** Class II wetland **with an**  
 25 **area, as delineated, of more than three-eighths (3/8) acre. This**  
 26 **subdivision does not apply to the maintenance of a field tile**  
 27 **within a Class H wetland under section 4(a)(1): that does not**  
 28 **qualify for a general permit under section 4 of this chapter.**

29 (2) Wetland activity in a Class III wetland.

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

33 SECTION 7. IC 13-18-22-4, AS AMENDED BY P.L.160-2021,  
 34 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 35 JULY 1, 2024]: Sec. 4. (a) The following shall be authorized by a  
 36 general permit:

37 (1) The maintenance of a field tile within a Class II wetland.  
 38 However, the maintenance described in this subdivision may be  
 39 authorized only if the field tile:

40 (A) is necessary to restore drainage of land adjacent to the  
 41 wetland; and

42 (B) does not have the effect of draining the wetland.



1 (2) The maintenance of a field tile within a Class III wetland:  
 2 However, the maintenance described in this subdivision may be  
 3 authorized only if:

4 (A) the maintenance of the field tile:

5 (i) is necessary to restore drainage of land adjacent to the  
 6 wetland; and

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

8 (B) the applicant obtains a site-specific approval for the  
 9 maintenance of the field tile under section 12 of this chapter.

10 **Dredge and fill activities with minimal impact that are at**  
 11 **or below impact thresholds, including the activities**  
 12 **analogous to those allowed under the nationwide permit**  
 13 **program (as published in 67 Fed. Reg. 2077-2089 (2002)).**

14 (b) The maintenance of a field tile in a Class I wetland does not  
 15 require a permit.

16 (c) The board ~~shall~~ **may** adopt rules under IC 4-22-2 and IC 13-14  
 17 to establish and implement the general permits described in subsection  
 18 (a).

19 **(d) The department may not authorize a wetlands activity**  
 20 **described in subsection (a) unless the applicant:**

21 **(1) identifies the water to be affected by the activity; and**

22 **(2) provides a compensatory mitigation plan as set forth in**  
 23 **section 6 of this chapter.**

24 SECTION 8. IC 13-18-22-5 IS AMENDED TO READ AS  
 25 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 5. (a) ~~The rules adopted~~  
 26 ~~under section 3 of~~ **An applicant for a permit issued under** this  
 27 chapter:

28 (1) ~~must require that the applicant demonstrate, as a prerequisite~~  
 29 ~~to the issuance of the permit, that wetland activity:~~

30 (A) is:

31 (i) without reasonable alternative; and

32 (ii) reasonably necessary or appropriate;

33 to achieve a legitimate use proposed by the applicant on the  
 34 property on which the wetland is located; and

35 (B) for a Class III wetland, is without practical alternative and  
 36 will be accompanied by taking steps that are practicable and  
 37 appropriate to minimize potential adverse impacts of the  
 38 discharge on the aquatic ecosystem of the wetland; **and**

39 (2) ~~except as provided in subsection (e);~~ **(b),** must establish that  
 40 compensatory mitigation will be provided as set forth in section  
 41 6 of this chapter to reasonably offset the loss of wetlands allowed  
 42 by the permits. ~~and~~



1 ~~(3)~~ **The department or the board** may prescribe additional conditions  
2 **on applicants** that are reasonable and necessary to carry out the  
3 purposes of this chapter.

4 (b) ~~The rules adopted under section 4 of this chapter must require,~~  
5 as a prerequisite to the applicability of the general permit by rule to a  
6 specific wetland activity, that the person proposing the discharge  
7 submit to the department a notice of intent to be covered by the general  
8 permit by rule that:

9 (1) identifies the wetlands to be affected by the wetland activity;  
10 and

11 (2) ~~except as provided in subsection (c); provides a compensatory~~  
12 ~~mitigation plan as set forth in section 6 of this chapter to~~  
13 ~~reasonably offset the loss of wetlands allowed by the general~~  
14 ~~permit.~~

15 (c) ~~(b)~~ Under subsections (a) and (b), the rules adopted under  
16 sections 3 and 4 of this chapter may provide for **The commissioner**  
17 **may approve** exceptions to compensatory mitigation in specific,  
18 limited circumstances.

19 ~~(d)~~ (c) For purposes of subsection (a)(1)(A):

20 (1) a resolution of the executive of the county or municipality in  
21 which the wetland is located; or

22 (2) a permit or other approval from a local government entity  
23 having authority over the proposed use of the property on which  
24 the wetland is located;

25 that includes a specific finding that the wetland activity is as described  
26 in subsection (a)(1)(A) is considered conclusive evidence of that fact.

27 SECTION 9. IC 13-18-22-6, AS AMENDED BY P.L.160-2021,  
28 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
29 JULY 1, 2024]: Sec. 6. (a) Except as otherwise specified in subsections  
30 (b), ~~and (c), (e), (f), and (h)~~, compensatory mitigation shall be provided  
31 in accordance with the following table:

32 Wetland Class	33 Replacement Class	34 On-site and In-lieu Fee Ratio	35 Off-site Ratio
36 Class II	37 Class II or III	38 1.5 to 1 Nonforested	39 2 to 1 Nonforested
		40 2 to 1 Forested	41 2.5 to 1 Forested
42 Class III	Class III	2 to 1 Nonforested	2.5 to 1 Nonforested
		2.5 to 1 Forested	3 to 1 Forested



1 (b) The compensatory mitigation ratio shall be lowered to one to one  
 2 (1:1) if the compensatory mitigation is completed before the initiation  
 3 of the wetland activity.

4 (c) A wetland that is created or restored as a water of the United  
 5 States may be used, as an alternative to the creation or restoration of an  
 6 isolated wetland, as compensatory mitigation for purposes of this  
 7 section. The replacement class of a wetland that is a water of the  
 8 United States shall be determined by applying the characteristics of a  
 9 Class I, Class II, or Class III wetland, as appropriate, to the replacement  
 10 wetland as if it were an isolated wetland.

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

12 (1) within:

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

15 (B) the same county;

16 as the isolated wetlands subject to the authorized wetland activity;

17 or

18 (2) within a designated service area established in an in lieu fee  
 19 mitigation program approved by the ~~United States Army Corps of~~  
 20 ~~Engineers~~ department.

21 (e) **For purposes of satisfying subsection (a), compensatory**  
 22 **mitigation may consist of:**

23 (1) **one (1) or a combination of the following:**

24 (A) **Creation or restoration of a wetland by the permittee.**

25 (B) **Bank credits.**

26 (C) **In lieu fee credits; or**

27 (2) **a combination of creation or restoration and preservation**  
 28 **methods such that:**

29 (A) **creation or restoration of a wetland by the permittee**  
 30 **accounts for at least a one to one (1:1) ratio of mitigation;**  
 31 **and**

32 (B) **preservation of a wetland by the permittee, under**  
 33 **subsection (h), accounts for any remaining mitigation**  
 34 **required under subsection (a).**

35 (f) **An exempt isolated wetlands:**

36 (1) **may be used to provide compensatory mitigation for wetlands**  
 37 **activities in state regulated wetlands. An exempt isolated wetland**  
 38 **that is used to provide compensatory mitigation becomes a state**  
 39 **regulated wetland. considered a created or restored wetlands**  
 40 **for purposes of subsection (e)(1)(A) and (e)(2)(A); and**

41 (2) **if so considered, shall receive compensatory mitigation**  
 42 **credit as follows:**



- 1 (A) A Class I wetland may be enhanced to a Class II
- 2 wetland by the permittee and used for mitigation credit for
- 3 impacts to Class II wetland at the following ratios:
- 4 (i) One to one (1:1) if the enhancement occurs prior to
- 5 impacts.
- 6 (ii) Two to one (2:1) if the enhancement occurs after
- 7 permitting.
- 8 (B) If the mitigation wetland is the same or a higher
- 9 classification than the impacted wetland, the mitigation
- 10 wetland credit ratio is one to one (1:1).
- 11 (C) Except as provided in clause (A), if the mitigation
- 12 wetland is a lower classification than the impacted wetland,
- 13 then mitigation credit shall be given in accordance with the
- 14 following ratios:

Mitigation	Impact	Mitigation
Wetland	Wetland	Credit Ratio
		(Acres of Mitigation:
		Acres of Credit)
Class I	Class II	3 to 1
Class II	Class III	4 to 1

15 (g) An exempt isolated wetland that is used to provide

16 compensatory mitigation under subsection (f) becomes state

17 regulated wetland.

18 (h) A nonexempt, Class II or Class III isolated wetland that is

19 not impacted and that is protected with a deed restriction or

20 conservation easement:

21 (1) may be preserved for purposes of subsection (e)(2)(B) so

22 long as the nonexempt, Class II or Class III isolated wetland

23 is the same or a higher classification as the impacted

24 wetland; and

25 (2) if the condition in subdivision (1) is met, shall receive

26 compensatory mitigation credit as follows:

	Impact - Wetland Type or Class			
Mitigation	Class II	Class II	Class III	Class III
Wetland	Nonforested	Forested	Nonforested	Forested
Type				
Class II	6 to 1	8 to 1	N/A	N/A
On-site				
Nonforested				
Class II	5 to 1	6 to 1	N/A	N/A
On-site				
Forested				



1	<b>Class II</b>	<b>7 to 1</b>	<b>9 to 1</b>	<b>N/A</b>	<b>N/A</b>
2	<b>Off-site</b>				
3	<b>Nonforested</b>				
4	<b>Class II</b>	<b>6 to 1</b>	<b>7 to 1</b>	<b>N/A</b>	<b>N/A</b>
5	<b>Off-site</b>				
6	<b>Forested</b>				
7	<b>Class III</b>	<b>4 to 1</b>	<b>5.5 to 1</b>	<b>7 to 1</b>	<b>9 to 1</b>
8	<b>On-site</b>				
9	<b>Nonforested</b>				
10	<b>Class III</b>	<b>3 to 1</b>	<b>4.5 to 1</b>	<b>6 to 1</b>	<b>7 to 1</b>
11	<b>On-site</b>				
12	<b>Forested</b>				
13	<b>Class III</b>	<b>4.5 to 1</b>	<b>6 to 1</b>	<b>8 to 1</b>	<b>10 to 1</b>
14	<b>Off-site</b>				
15	<b>Nonforested</b>				
16	<b>Class III</b>	<b>3.5 to 1</b>	<b>5 to 1</b>	<b>7 to 1</b>	<b>8 to 1</b>
17	<b>Off-site</b>				
18	<b>Forested</b>				

(i) **Unless otherwise specified, compensatory mitigation provided under this section must be protected with a restrictive covenant that is recorded with respect to the property on which the mitigation wetland is located.**

SECTION 10. 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 requirements** under this chapter.

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

SECTION 11. IC 13-18-22-8, AS AMENDED BY P.L.160-2021, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 8. (a) ~~Subject to subsection (f);~~ The department shall make a decision to issue or deny an individual permit under section 3 of this chapter not later than ninety (90) days after receipt of the completed application. If the department fails to make a decision on a permit application by the deadline under this subsection or subsection (d), a permit is considered to have been issued by the department in accordance with the application.



1 (b) A general permit under section 4 of this chapter becomes  
2 effective with respect to a proposed wetland activity that is within the  
3 scope of the general permit on the thirty-first day after the department  
4 receives a notice of intent from the person proposing the wetland  
5 activity that the wetland activity be authorized under the general  
6 permit.

7 (c) The department must support a denial under subsection (a) by a  
8 written statement of reasons.

9 (d) The department may notify the applicant that the completed  
10 application referred to in subsection (a) is deficient. If the department  
11 fails to give notice to the applicant under this subsection not later than  
12 fifteen (15) days after the department's receipt of the completed  
13 application, the application is considered not to have been deficient.  
14 After receipt of a notice under this subsection, the applicant may  
15 submit an amended application that corrects the deficiency. The  
16 department shall make a decision to issue or deny an individual permit  
17 under the amended application within a period that ends a number of  
18 days after the date the department receives the amended application  
19 equal to the remainder of:

- 20 (1) ninety (90) days; minus
- 21 (2) the number of days the department held the initial application
- 22 before giving a notice of deficiency under this subsection.

23 SECTION 12. IC 13-18-22-12, AS ADDED BY P.L.160-2021,  
24 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
25 JULY 1, 2024]: Sec. 12. (a) A person seeking to engage in maintenance  
26 of a field tile within a Class III wetland under section 4(a)(2) of this  
27 chapter may apply to the department for a site-specific approval for the  
28 activity in accordance with this section. ~~and the rules adopted under~~  
29 ~~section 4(c) of this chapter.~~

30 (b) An applicant for a site-specific approval under this section must  
31 provide information to the department on the need to perform the  
32 activity described in subsection (a), including the following:

- 33 (1) Information showing the location and area needed to be
- 34 disturbed within the Class III wetland.
- 35 (2) Lack of reasonable alternatives to the disturbance of the area
- 36 referred to in subdivision (1).

