

## SENATE BILL No. 389

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 13-11-2; IC 13-14-9-3; IC 13-18-22; IC 13-30-10-6; IC 14-28-1; IC 35-52-13-16.

**Synopsis:** Repeals state regulated wetlands law. Repeals the law requiring a permit from the department of environmental management for wetland activity in a state regulated wetland. Makes corresponding changes to eliminate references to that law. States that the repeal of that law is not intended to affect: (1) the regulation in Indiana under the federal Clean Water Act of the discharge of dredged or fill material into waters of the United States; or (2) the authorization of the state of Indiana to administer the National Pollutant Discharge Elimination System permit program.

**Effective:** July 1, 2021.

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**Garten, Messmer, Rogers, Baldwin,  
Zay, Sandlin, Doriot, Gaskill,  
Niemeyer**

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January 14, 2021, read first time and referred to Committee on Environmental Affairs.

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First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

## SENATE BILL No. 389

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 IC 13-11-2-25.8 IS REPEALED [EFFECTIVE JULY  
2 1, 2021]. ~~Sec. 25-8: (a) For purposes of IC 13-18:~~  
3 ~~(1) "Class I wetland" means an isolated wetland described by one~~  
4 ~~(1) or both of the following:~~  
5 ~~(A) At least fifty percent (50%) of the wetland has been~~  
6 ~~disturbed or affected by human activity or development by one~~  
7 ~~(1) or more of the following:~~  
8 ~~(i) Removal or replacement of the natural vegetation.~~  
9 ~~(ii) Modification of the natural hydrology.~~  
10 ~~(B) The wetland supports only minimal wildlife or aquatic~~  
11 ~~habitat or hydrologic function because the wetland does not~~  
12 ~~provide critical habitat for threatened or endangered species~~  
13 ~~listed in accordance with the Endangered Species Act of 1973~~  
14 ~~(16 U.S.C. 1531 et seq.) and the wetland is characterized by at~~  
15 ~~least one (1) of the following:~~  
16 ~~(i) The wetland is typified by low species diversity.~~  
17 ~~(ii) The wetland contains greater than fifty percent (50%)~~



- 1 areal coverage of non-native invasive species of vegetation:  
 2 (iii) The wetland does not support significant wildlife or  
 3 aquatic habitat.  
 4 (iv) The wetland does not possess significant hydrologic  
 5 function;
- 6 (2) "Class H wetland" means:  
 7 (A) an isolated wetland that is not a Class I or Class HH  
 8 wetland; or  
 9 (B) a type of wetland listed in subdivision (3)(B) that would  
 10 meet the definition of Class I wetland if the wetland were not  
 11 a rare or ecologically important type; and
- 12 (3) "Class HH wetland" means an isolated wetland:  
 13 (A) that is located in a setting undisturbed or minimally  
 14 disturbed by human activity or development and that supports  
 15 more than minimal wildlife or aquatic habitat or hydrologic  
 16 function; or  
 17 (B) unless classified as a Class H wetland under subdivision  
 18 (2)(B); that is of one (1) of the following rare and ecologically  
 19 important types:  
 20 (i) Acid bog;  
 21 (ii) Acid seep;  
 22 (iii) Circumneutral bog;  
 23 (iv) Circumneutral seep;  
 24 (v) Cypress swamp;  
 25 (vi) Dune and swale;  
 26 (vii) Fen;  
 27 (viii) Forested fen;  
 28 (ix) Forested swamp;  
 29 (x) Marl beach;  
 30 (xi) Muck flat;  
 31 (xii) Panne;  
 32 (xiii) Sand flat;  
 33 (xiv) Sedge meadow;  
 34 (xv) Shrub swamp;  
 35 (xvi) Sinkhole pond;  
 36 (xvii) Sinkhole swamp;  
 37 (xviii) Wet floodplain forest;  
 38 (xix) Wet prairie;  
 39 (xx) Wet sand prairie;
- 40 (b) For purposes of this section, a wetland or setting is not  
 41 considered disturbed or affected as a result of an action taken after  
 42 January 1, 2004, for which a permit is required under IC 13-18-22 but



1 has not been obtained:

2 SECTION 2. IC 13-11-2-29, AS AMENDED BY P.L.189-2018,  
3 SECTION 107, IS AMENDED TO READ AS FOLLOWS  
4 [EFFECTIVE JULY 1, 2021]: Sec. 29. "Clean Water Act", for purposes  
5 of this chapter ~~IC 13-18-22~~; and IC 13-18-23, refers to:

- 6 (1) 33 U.S.C. 1251 et seq.; and  
7 (2) regulations adopted under 33 U.S.C. 1251 et seq.

8 SECTION 3. IC 13-11-2-36.3 IS REPEALED [EFFECTIVE JULY  
9 1, 2021]. Sec. ~~36.3~~. "Compensatory mitigation", for purposes of  
10 ~~IC 13-18-22~~; means the:

- 11 (1) restoration; or  
12 (2) creation;

13 of wetlands to offset or compensate for a loss of wetlands resulting  
14 from an authorized wetland activity. Wetlands enlargement,  
15 enhancement, and preservation may be considered compensatory  
16 mitigation on a case-by-case basis, particularly for Class III wetlands.

17 SECTION 4. IC 13-11-2-74.5 IS REPEALED [EFFECTIVE JULY  
18 1, 2021]. Sec. 74.5. (a) "Exempt isolated wetland", for purposes of  
19 ~~IC 13-18~~ and environmental management laws; means an isolated  
20 wetland that:

- 21 (1) is a voluntarily created wetland unless:  
22 (A) the wetland is approved by the department for  
23 compensatory mitigation purposes in accordance with a permit  
24 issued under Section 404 of the Clean Water Act or  
25 ~~IC 13-18-22~~;  
26 (B) the wetland is reclassified as a state regulated wetland  
27 under ~~IC 13-18-22-6(c)~~; or  
28 (C) the owner of the wetland declares, by a written instrument:  
29 (i) recorded in the office of the recorder of the county or  
30 counties in which the wetland is located; and  
31 (ii) filed with the department;  
32 that the wetland is to be considered in all respects to be a state  
33 regulated wetland;  
34 (2) exists as an incidental feature in or on:  
35 (A) a residential lawn;  
36 (B) a lawn or landscaped area of a commercial or  
37 governmental complex;  
38 (C) agricultural land;  
39 (D) a roadside ditch;  
40 (E) an irrigation ditch; or  
41 (F) a manmade drainage control structure;  
42 (3) is a fringe wetland associated with a private pond;



- 1 (4) is, or is associated with, a manmade body of surface water of  
 2 any size created by:  
 3 (A) excavating;  
 4 (B) diking; or  
 5 (C) excavating and diking;  
 6 dry land to collect and retain water for or incidental to  
 7 agricultural, commercial, industrial, or aesthetic purposes;  
 8 (5) subject to subsection (c), is a Class I wetland with an area, as  
 9 delineated, of one-half (1/2) acre or less;  
 10 (6) subject to subsection (d), is a Class II wetland with an area, as  
 11 delineated, of one-fourth (1/4) acre or less;  
 12 (7) is located on land:  
 13 (A) subject to regulation under United States Department of  
 14 Agriculture wetland conservation programs, including  
 15 Swampbuster and the Wetlands Reserve Program, because of  
 16 voluntary enrollment in a federal farm program; and  
 17 (B) used for agricultural or other purposes allowed under the  
 18 programs referred to in clause (A); or  
 19 (8) is constructed for reduction or control of pollution.  
 20 (b) For purposes of subsection (a)(2), an isolated wetland exists as  
 21 an incidental feature:  
 22 (1) if:  
 23 (A) the owner or operator of the property or facility described  
 24 in subsection (a)(2) does not intend the isolated wetland to be  
 25 a wetland;  
 26 (B) the isolated wetland is not essential to the function or use  
 27 of the property or facility; and  
 28 (C) the isolated wetland arises spontaneously as a result of  
 29 damp soil conditions incidental to the function or use of the  
 30 property or facility; and  
 31 (2) if the isolated wetland satisfies any other factors or criteria  
 32 established in rules that are:  
 33 (A) adopted by the board; and  
 34 (B) not inconsistent with the factors and criteria described in  
 35 subdivision (1).  
 36 (c) The total acreage of Class I wetlands on a tract to which the  
 37 exemption described in subsection (a)(5) may apply is limited to the  
 38 larger of:  
 39 (1) the acreage of the largest individual isolated wetland on the  
 40 tract that qualifies for the exemption described in subsection  
 41 (a)(5); and  
 42 (2) fifty percent (50%) of the cumulative acreage of all individual



- 1 isolated wetlands on the tract that would qualify for the exemption  
 2 described in subsection (a)(5) but for the limitation of this  
 3 subsection.
- 4 (d) The total acreage of Class H wetlands on a tract to which the  
 5 exemption described in subsection (a)(6) may apply is limited to the  
 6 larger of:
- 7 (1) the acreage of the largest individual isolated wetland on the  
 8 tract that qualifies for the exemption described in subsection  
 9 (a)(6); and
- 10 (2) thirty-three and one-third percent (33 1/3%) of the cumulative  
 11 acreage of all individual isolated wetlands on the tract that would  
 12 qualify for the exemption described in subsection (a)(6) but for  
 13 the limitation of this subsection.
- 14 (e) An isolated wetland described in subsection (a)(5) or (a)(6) does  
 15 not include an isolated wetland on a tract that contains more than one  
 16 (1) of the same class of wetland until the owner of the tract notifies the  
 17 department that the owner has selected the isolated wetland to be an  
 18 exempt isolated wetland under subsection (a)(5) or (a)(6) consistent  
 19 with the applicable limitations described in subsections (c) and (d):
- 20 SECTION 5. IC 13-11-2-104.7 IS REPEALED [EFFECTIVE JULY  
 21 1, 2021]. Sec. 104.7: "In lieu fee mitigation program", for purposes of  
 22 IC 13-18-22-6; means a program under which a person proposing a  
 23 wetland activity in a state regulated wetland provides funds to a third  
 24 party that will use the funds to offset the loss of wetlands resulting from  
 25 the proposed wetland activity:
- 26 SECTION 6. IC 13-11-2-221.5 IS REPEALED [EFFECTIVE JULY  
 27 1, 2021]. Sec. 221.5: "State regulated wetland", for purposes of  
 28 IC 13-18; means an isolated wetland located in Indiana that is not an  
 29 exempt isolated wetland:
- 30 SECTION 7. IC 13-11-2-265.6 IS REPEALED [EFFECTIVE JULY  
 31 1, 2021]. Sec. 265.6: "Wetland activity", for purposes of IC 13-18-22;  
 32 means the discharge of:
- 33 (1) dredged; or  
 34 (2) fill;  
 35 material into an isolated wetland:
- 36 SECTION 8. IC 13-11-2-265.8 IS REPEALED [EFFECTIVE JULY  
 37 1, 2021]. Sec. 265.8: "Wetlands delineation" or "delineation"; for  
 38 purposes of section 74.5 of this chapter; means a technical assessment:  
 39 (1) of whether a wetland exists on an area of land; and  
 40 (2) if so; of the type and quality of the wetland based on the  
 41 presence or absence of wetlands characteristics; as determined  
 42 consistently with the Wetlands Delineation Manual; Technical



1 Report Y-87-1 of the United States Army Corps of Engineers.

2 SECTION 9. IC 13-14-9-3, AS AMENDED BY P.L.100-2006,  
3 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 2021]: Sec. 3. (a) ~~Except as provided in subsection (b)~~; The  
5 department shall provide notice in the Indiana Register of the first  
6 public comment period required by section 2 of this chapter. A notice  
7 provided under this section must do the following:

8 (1) Identify the authority under which the proposed rule is to be  
9 adopted.

10 (2) Describe the subject matter and the basic purpose of the  
11 proposed rule. The description required by this subdivision must:

12 (A) list all alternatives being considered by the department at  
13 the time of the notice;

14 (B) state whether each alternative listed under clause (A)  
15 creates:

16 (i) a restriction or requirement more stringent than a  
17 restriction or requirement imposed under federal law; or

18 (ii) a restriction or requirement in a subject area in which  
19 federal law does not impose restrictions or requirements;

20 (C) state the extent to which each alternative listed under  
21 clause (A) differs from federal law;

22 (D) include any information known to the department about  
23 the potential fiscal impact of each alternative under clause (A)  
24 that creates:

25 (i) a restriction or requirement more stringent than a  
26 restriction or requirement imposed under federal law; or

27 (ii) a restriction or requirement in a subject area in which  
28 federal law does not impose restrictions or requirements;

29 and

30 (E) set forth the basis for each alternative listed under clause  
31 (A).

32 (3) Describe the relevant statutory or regulatory requirements or  
33 restrictions relating to the subject matter of the proposed rule that  
34 exist before the adoption of the proposed rule.

35 (4) Request the submission of alternative ways to achieve the  
36 purpose of the proposed rule.

37 (5) Request the submission of comments, including suggestions  
38 of specific language for the proposed rule.

39 (6) Include a detailed statement of the issue to be addressed by  
40 adoption of the proposed rule.

41 ~~(b) This section does not apply to rules adopted under~~  
42 ~~IC 13-18-22-2, IC 13-18-22-3, or IC 13-18-22-4.~~



1           (e) **(b)** The notice required under subsection (a) shall be published  
2 electronically in the Indiana Register under procedures established by  
3 the publisher.

4           SECTION 10. IC 13-18-22 IS REPEALED [EFFECTIVE JULY 1,  
5 2021]. (State Regulated Wetlands).

6           SECTION 11. IC 13-30-10-6 IS REPEALED [EFFECTIVE JULY  
7 1, 2021]. Sec. 6: (a) A person who:

8           (1) knowingly or intentionally violates:

9           (A) the terms of a permit issued under IC 13-18-22 that relates  
10 to state regulated wetlands; or

11           (B) a statute that relates to state regulated wetlands; and

12           (2) causes substantial harm to a state regulated wetland;

13 commits a Level 6 felony.

14           (b) Notwithstanding IC 35-50-2-6(a); IC 35-50-2-7(a); or  
15 IC 35-50-3-2; the court may order a person convicted under this section  
16 to pay:

17           (1) a fine of at least five thousand dollars (\$5,000) and not more  
18 than fifty thousand dollars (\$50,000) for each day of violation; or

19           (2) if the person has a prior unrelated conviction for an offense  
20 under this title that may be punished as a felony; a fine of not  
21 more than one hundred thousand dollars (\$100,000) for each day  
22 of violation.

23 In determining the amount of a fine imposed for a violation of this  
24 section; the court shall consider any improper economic benefit;  
25 including unjust enrichment; received by the defendant as a result of  
26 the unlawful conduct.

27           SECTION 12. IC 14-28-1-37, AS ADDED BY P.L.214-2014,  
28 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
29 JULY 1, 2021]: Sec. 37. The department and the department of  
30 environmental management shall, not later than January 1, 2015,  
31 develop and implement a process to improve efficiency and  
32 transparency in programs for:

33           (1) water quality certifications from the department of  
34 environmental management under IC 13-13-5-1(1) and Section  
35 401 of the federal Clean Water Act (33 U.S.C. 1341); **and**

36           (2) permits from the department of environmental management  
37 for wetland activity in a state regulated wetland under  
38 IC 13-18-22; and

39           (3) (2) permits from the director for a structure, obstruction,  
40 deposit, or excavation in a floodway under IC 14-28-1.

41           SECTION 13. IC 14-28-1-38, AS ADDED BY P.L.214-2014,  
42 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE





1 JULY 1, 2021]: Sec. 38. (a) As used in this section, "permit" means any  
2 of the following:

3 (1) A water quality certification from the department of  
4 environmental management under IC 13-13-5-1(1) and Section  
5 401 of the federal Clean Water Act (33 U.S.C. 1341).

6 ~~(2) A permit from the department of environmental management  
7 for wetland activity in a state regulated wetland under  
8 IC 13-18-22.~~

9 ~~(3) (2) A permit from the director for a structure, obstruction,  
10 deposit, or excavation in a floodway under IC 14-28-1.~~

11 (b) In establishing the process required under section 37 of this  
12 chapter, the department and the department of environmental  
13 management shall do the following:

14 (1) Determine:

15 (A) how to inform a person who proposes to perform work for  
16 which a permit is required of the need to seek a permit for the  
17 work; and

18 (B) how to ensure that a person proposing to perform work for  
19 which a permit is required is informed of every state permit  
20 the person needs in order to do the work.

21 (2) Change the:

22 (A) application forms;

23 (B) application processes; or

24 (C) application forms and application processes;

25 used by the department and the department of environmental  
26 management for purposes of permits as necessary to ensure that  
27 a person proposing to perform work for which a permit is required  
28 is not required to provide the same information separately to the  
29 department and the department of environmental management.

30 (3) Determine how either the department or the department of  
31 environmental management may serve as the single point of  
32 contact, for purposes of:

33 (A) distributing and receiving permit applications;

34 (B) obtaining information needed to complete the processing  
35 of permit applications; and

36 (C) issuing permits;

37 for an applicant who does not need to have independent contact  
38 with the department that is not serving as the single point of  
39 contact.

40 (4) Create an internal process to ensure that the appropriate office  
41 within the department and the department of environmental  
42 management receives and timely reviews each permit application.



- 1           (5) Ensure that the processing of each permit application is  
2           monitored.
- 3           SECTION 14. IC 35-52-13-16 IS REPEALED [EFFECTIVE JULY  
4           1, 2021]. ~~Sec. 16. IC 13-30-10-6 defines a crime concerning the~~  
5           environment:
- 6           SECTION 15. [EFFECTIVE JULY 1, 2021] (a) **The general**  
7           **assembly declares that, in repealing IC 13-18-22, it does not intend**  
8           **to affect in any way:**
- 9               (1) **the regulation in Indiana of the discharge of dredged or fill**  
10              **material into waters of the United States, including wetlands,**  
11              **under Section 404 of the federal Clean Water Act (33 U.S.C.**  
12              **1344); or**
- 13              (2) **the authorization of the state of Indiana to administer the**  
14              **National Pollutant Discharge Elimination System permit**  
15              **program under Section 402 of the federal Clean Water Act**  
16              **(33 U.S.C. 1342).**
- 17           (b) **This SECTION expires July 1, 2022.**

