



April 8, 2021

ENGROSSED
SENATE BILL No. 389

DIGEST OF SB 389 (Updated April 7, 2021 9:21 am - DI 141)

Citations Affected: IC 13-11; IC 13-18; noncode.

Synopsis: Wetlands. Amends the law requiring a permit and compensatory mitigation for "wetland activity" (the discharge of dredged or fill material) in a state regulated wetland: (1) by changing the definition of "Class II wetland"; (2) by adding a wetland that meets the definition of "wetlands" only because of the presence of an ephemeral stream to the definition of "exempt isolated wetlands" that are exempt from the permit and mitigation requirements; (3) by providing that a permit is not needed for the development of cropland that has been used for agricultural purposes: (A) in the five years
(Continued next page)

Effective: Upon passage; July 1, 2021.

**Garten, Messmer, Rogers, Baldwin,
Zay, Sandlin, Doriot, Gaskill,
Niemeyer, Brown L, Freeman, Koch,
Houchin, Busch, Crane, Buck, Perfect,
Boots, Holdman, Kruse, Tomes,
Leising**

(HOUSE SPONSORS — LEHMAN, GUTWEIN, THOMPSON, MORRISON)

January 14, 2021, read first time and referred to Committee on Environmental Affairs.
January 26, 2021, amended, reported favorably — Do Pass.
January 28, 2021, read second time, ordered engrossed. Engrossed.
February 1, 2021, read third time, passed. Yeas 29, nays 19.

HOUSE ACTION

March 2, 2021, read first time and referred to Committee on Environmental Affairs.
April 8, 2021, amended, reported — Do Pass.

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Digest Continued

immediately preceding the development; or (B) in the 10 years immediately preceding the development if the United States Army Corps of Engineers has issued a jurisdictional determination confirming that the cropland does not contain wetlands subject to federal jurisdiction; (4) by providing that wetland activity in a Class II wetland with an area of more than one-fourth acre but not more than three-eighths acre shall be authorized by a general permit rather than an individual permit; (5) by providing that: (A) no permit is needed for maintenance of a field tile in Class I wetland; (B) maintenance of a field tile in Class II wetland may be conducted with a general permit if certain conditions are met; and (C) maintenance of a field tile in a Class III wetland may be conducted with a general permit if certain conditions are met and the applicant obtains a site-specific approval; (6) by establishing conditions for obtaining a site-specific approval; (7) by changing the mitigation ratios for wetland activity: (A) to "1 to 1" for all Class I wetlands; (B) to "1.5 to 1" for all nonforested Class II wetlands; and (C) to "2 to 1" for all forested Class II wetlands; and (8) by requiring the department of environmental management (department) to make a decision to issue or deny an individual permit for wetland activity not later than 90 days (instead of 120 days) after receiving the completed application. Amends the law concerning a certification under Section 401 of the Clean Water Act for dredge and fill activity in a federally regulated wetland to require the department to make a final determination not later than 90 days (instead of 120 days) after receiving a completed application if the applicant requests a pre-coordination meeting. Urges the legislative council to assign an appropriate interim study committee to study the maintenance and management of wetlands in Indiana.



April 8, 2021

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.

ENGROSSED 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 AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 25.8. (a) For purposes
3 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.

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- 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 ~~(A) an isolated wetland that is not a~~
 8 ~~Class I or Class III wetland;~~ or ~~(B) a type of wetland listed in~~
 9 ~~subdivision (3)(B) that would meet the definition of Class I~~
 10 ~~wetland if the wetland were not a rare or ecologically important~~
 11 ~~type;~~ **an isolated wetland that supports moderate habitat or**
 12 **hydrological functions, including an isolated wetland that is**
 13 **dominated by native species but is generally without:**
 14 **(A) the presence of; or**
 15 **(B) habitat for;**
 16 **rare, threatened, or endangered species; and**
- 17 (3) "Class III wetland" means an isolated wetland:
 18 (A) that is located in a setting undisturbed or minimally
 19 disturbed by human activity or development and that supports
 20 more than minimal wildlife or aquatic habitat or hydrologic
 21 function; or
 22 (B) ~~unless classified as a Class II wetland under subdivision~~
 23 ~~(2)(B);~~ that is of one (1) of the following rare and ecologically
 24 important types:
 25 (i) Acid bog.
 26 (ii) Acid seep.
 27 (iii) Circumneutral bog.
 28 (iv) Circumneutral seep.
 29 (v) Cypress swamp.
 30 (vi) Dune and swale.
 31 (vii) Fen.
 32 (viii) Forested fen.
 33 (ix) Forested swamp.
 34 (x) Marl beach.
 35 (xi) Muck flat.
 36 (xii) Panne.
 37 (xiii) Sand flat.
 38 (xiv) Sedge meadow.
 39 (xv) Shrub swamp.
 40 (xvi) Sinkhole pond.
 41 (xvii) Sinkhole swamp.
 42 (xviii) Wet floodplain forest.



1 (xix) Wet prairie.

2 (xx) Wet sand prairie.

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

7 SECTION 2. IC 13-11-2-48.5 IS ADDED TO THE INDIANA
8 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
9 [EFFECTIVE JULY 1, 2021]: **Sec. 48.5. (a) "Cropland", for**
10 **purposes of IC 13-18-22-1(c), means farmland:**

11 (1) that is cultivated for agricultural purposes; and

12 (2) from which crops are harvested.

13 (b) The term includes:

14 (1) orchards;

15 (2) farmland used to produce row crops, close-grown crops,
16 or cultivated hay; and

17 (3) farmland intentionally kept out of production during a
18 regular growing season (summer fallow).

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

22 SECTION 3. IC 13-11-2-72.4 IS ADDED TO THE INDIANA
23 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
24 [EFFECTIVE JULY 1, 2021]: **Sec. 72.4. "Ephemeral stream", for**
25 **purposes of section 74.5 of this chapter, means surface water**
26 **flowing or pooling only in direct response to precipitation such as**
27 **rain or snowfall.**

28 SECTION 4. IC 13-11-2-74.5, AS AMENDED BY P.L.113-2014,
29 SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
30 JULY 1, 2021]: **Sec. 74.5. (a) "Exempt isolated wetland", for purposes**
31 **of IC 13-18 and environmental management laws, means an isolated**
32 **wetland that:**

33 (1) is a voluntarily created wetland unless:

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

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

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

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



- 1 (ii) filed with the department;
 2 that the wetland is to be considered in all respects to be a state
 3 regulated wetland;
 4 (2) exists as an incidental feature in or on:
 5 (A) a residential lawn;
 6 (B) a lawn or landscaped area of a commercial or
 7 governmental complex;
 8 (C) agricultural land;
 9 (D) a roadside ditch;
 10 (E) an irrigation ditch; or
 11 (F) a manmade drainage control structure;
 12 (3) is a fringe wetland associated with a private pond;
 13 (4) is, or is associated with, a manmade body of surface water of
 14 any size created by:
 15 (A) excavating;
 16 (B) diking; or
 17 (C) excavating and diking;
 18 dry land to collect and retain water for or incidental to
 19 agricultural, commercial, industrial, or aesthetic purposes;
 20 (5) subject to subsection (c), is a Class I wetland with an area, as
 21 delineated, of one-half (1/2) acre or less;
 22 (6) subject to subsection (d), is a Class II wetland with an area, as
 23 delineated, of one-fourth (1/4) acre or less;
 24 (7) is located on land:
 25 (A) subject to regulation under United States Department of
 26 Agriculture wetland conservation programs, including
 27 Swampbuster and the Wetlands Reserve Program, because of
 28 voluntary enrollment in a federal farm program; and
 29 (B) used for agricultural or other purposes allowed under the
 30 programs referred to in clause (A); ~~or~~
 31 (8) is constructed for reduction or control of pollution; **or**
 32 **(9) meets the definition of wetlands in section 265.7 of this**
 33 **chapter only because of the presence of an ephemeral stream.**
 34 (b) For purposes of subsection (a)(2), an isolated wetland exists as
 35 an incidental feature:
 36 (1) if:
 37 (A) the owner or operator of the property or facility described
 38 in subsection (a)(2) does not intend the isolated wetland to be
 39 a wetland;
 40 (B) the isolated wetland is not essential to the function or use
 41 of the property or facility; and
 42 (C) the isolated wetland arises spontaneously as a result of



- 1 damp soil conditions incidental to the function or use of the
2 property or facility; and
3 (2) if the isolated wetland satisfies any other factors or criteria
4 established in rules that are:
5 (A) adopted by the board; and
6 (B) not inconsistent with the factors and criteria described in
7 subdivision (1).
- 8 (c) The total acreage of Class I wetlands on a tract to which the
9 exemption described in subsection (a)(5) may apply is limited to the
10 larger of:
11 (1) the acreage of the largest individual isolated wetland on the
12 tract that qualifies for the exemption described in subsection
13 (a)(5); and
14 (2) fifty percent (50%) of the cumulative acreage of all individual
15 isolated wetlands on the tract that would qualify for the exemption
16 described in subsection (a)(5) but for the limitation of this
17 subsection.
- 18 (d) The total acreage of Class II wetlands on a tract to which the
19 exemption described in subsection (a)(6) may apply is limited to the
20 larger of:
21 (1) the acreage of the largest individual isolated wetland on the
22 tract that qualifies for the exemption described in subsection
23 (a)(6); and
24 (2) thirty-three and one-third percent (33 1/3%) of the cumulative
25 acreage of all individual isolated wetlands on the tract that would
26 qualify for the exemption described in subsection (a)(6) but for
27 the limitation of this subsection.
- 28 (e) An isolated wetland described in subsection (a)(5) or (a)(6) does
29 not include an isolated wetland on a tract that contains more than one
30 (1) of the same class of wetland until the owner of the tract notifies the
31 department that the owner has selected the isolated wetland to be an
32 exempt isolated wetland under subsection (a)(5) or (a)(6) consistent
33 with the applicable limitations described in subsections (c) and (d).
- 34 SECTION 5. IC 13-11-2-104.8 IS ADDED TO THE INDIANA
35 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
36 [EFFECTIVE JULY 1, 2021]: **Sec. 104.8. "In lieu fee", for purposes**
37 **of 13-18-22-6, means a fee that:**
38 **(1) is paid pursuant to:**
39 **(A) the department of natural resources stream and**
40 **wetland mitigation program; or**
41 **(B) another in lieu fee mitigation program;**
42 **(2) is paid to:**



- 1 **(A) the state government; or**
 2 **(B) the Indiana natural resources foundation created by**
 3 **IC 14-12-1-4; and**
 4 **(3) is applied toward the cost of:**
 5 **(A) restoring, establishing, enhancing, or preserving**
 6 **aquatic resources in compensation for the alteration of**
 7 **other aquatic resources; and**
 8 **(B) monitoring and providing long term management of**
 9 **the site where aquatic resources are restored, established,**
 10 **enhanced, or preserved with money provided by the fee.**

11 SECTION 6. IC 13-11-2-265.8 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 265.8. ~~"Wetlands~~
 13 ~~delineation"~~ or ~~"delineation"~~; For purposes of ~~section 74.5~~ of this
 14 chapter **and IC 13-18-22:**

15 **(1) "wetlands delineation" or "delineation" means a technical**
 16 **assessment:**

- 17 ~~(1)~~ **(A)** of whether a wetland exists on an area of land; and
 18 ~~(2)~~ **(B)** if so, of the type and quality of the wetland based on
 19 the presence or absence of wetlands characteristics, as
 20 determined consistently with the Wetlands Delineation
 21 Manual, Technical Report Y-87-1 of the United States Army
 22 Corps of Engineers; **and**

23 **(2) "delineated" describes property that has undergone**
 24 **wetlands delineation.**

25 SECTION 7. IC 13-18-22-1, AS AMENDED BY P.L.166-2020,
 26 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2021]: Sec. 1. (a) Except as provided in subsection (b), a
 28 person proposing a wetland activity in a state regulated wetland must
 29 obtain a permit under this chapter to authorize the wetland activity.

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

- 31 (1) The discharge of dirt, sand, rock, stone, concrete, or other
 32 inert fill materials in a de minimis amount.
 33 (2) A wetland activity at a surface coal mine for which the
 34 department of natural resources has approved a plan to:
 35 (A) minimize, to the extent practical using best technology
 36 currently available, disturbances and adverse effects on fish
 37 and wildlife;
 38 (B) otherwise effectuate environmental values; and
 39 (C) enhance those values where practicable.

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

- 42 (A) normal farming, silviculture, and ranching activities, such



- 1 as plowing, seeding, cultivating, minor drainage, harvesting
 2 for the production of food, fiber, and forest products, or upland
 3 soil and water conservation practices;
- 4 (B) maintenance, including emergency reconstruction of
 5 recently damaged parts, of currently serviceable structures
 6 such as dikes, dams, levees, groins, riprap, breakwaters,
 7 causeways, and bridge abutments or approaches, and
 8 transportation structures;
- 9 (C) construction or maintenance of farm or stock ponds or
 10 irrigation ditches, or the maintenance of drainage ditches;
- 11 (D) construction of temporary sedimentation basins on a
 12 construction site that does not include placement of fill
 13 material into the navigable waters; and
- 14 (E) construction or maintenance of farm roads or forest roads,
 15 or temporary roads for moving mining equipment, where the
 16 roads are constructed and maintained, in accordance with best
 17 management practices, to assure that:
- 18 (i) flow and circulation patterns and chemical and biological
 19 characteristics of the navigable waters are not impaired;
- 20 (ii) the reach of the navigable waters is not reduced; and
- 21 (iii) any adverse effect on the aquatic environment will be
 22 otherwise minimized.
- 23 (4) The maintenance or reconstruction (as defined in
 24 IC 36-9-27-2) of a regulated drain in accordance with
 25 IC 36-9-27-29(2) as long as the work takes place within the
 26 current easement, and the reconstruction does not substantially
 27 change the characteristics of the drain to perform the function for
 28 which it was designed and constructed.
- 29 **(5) Wetland activities in an exempt isolated wetland, as**
 30 **defined in IC 13-11-2-74.5.**
- 31 (e) The goal of the permitting program for wetland activities in state
 32 regulated wetlands is to:
- 33 (1) promote a net gain in high quality isolated wetlands; and
- 34 (2) assure that compensatory mitigation will offset the loss of
 35 isolated wetlands allowed by the permitting program.
- 36 **(c) The development of cropland, as defined in IC 13-11-2-48.5,**
 37 **does not require a permit under this chapter if the cropland has**
 38 **been used for agricultural purposes:**
- 39 (1) in the five (5) years immediately preceding the
 40 development; or
- 41 (2) in the ten (10) years immediately preceding the
 42 development, if the United States Army Corps of Engineers



1 **has issued a jurisdictional determination confirming that the**
 2 **cropland does not contain wetlands subject to federal**
 3 **jurisdiction under Section 404 of the Clean Water Act.**

4 **After receiving a jurisdictional determination described in**
 5 **subdivision (2) from the United States Army Corps of Engineers,**
 6 **the department shall notify the person proposing the wetland**
 7 **activity that the development of the cropland used for agricultural**
 8 **purposes in the immediately preceding ten (10) years is exempt**
 9 **from the permit requirement of subsection (a) under subdivision**
 10 **(2).**

11 SECTION 8. IC 13-18-22-3 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 3. (a) An individual
 13 permit is required to authorize a wetland activity in a Class III wetland.

14 (b) Except as provided in section ~~4(a)~~ **4(a)(2)** of this chapter, an
 15 individual permit is required to authorize a wetland activity in a Class
 16 II wetland.

17 (c) The board shall adopt rules under IC 4-22-2 and IC 13-14 ~~not~~
 18 ~~later than June 1, 2005~~, to govern the issuance of individual permits by
 19 the department under subsections (a) and (b).

20 SECTION 9. IC 13-18-22-4 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 4. (a) ~~Wetland~~
 22 ~~activities with minimal impact in Class I wetlands and Class II~~
 23 ~~wetlands, including the activities analogous to those allowed under the~~
 24 ~~nationwide permit program (as published in 67 Fed. Reg. 2077-2089~~
 25 ~~(2002)); shall be authorized by a general permit rule. The following~~
 26 **shall be authorized by a general permit:**

27 ~~(b) (1) Wetland activities activity in a Class I wetlands shall be~~
 28 ~~authorized by a general permit rule: wetland with an area, as~~
 29 ~~delineated, of more than one-half (1/2) acre.~~

30 **(2) Wetland activity in a Class II wetland with an area, as**
 31 **delineated, of more than one-fourth (1/4) acre and not more**
 32 **than three eighths (3/8) acre.**

33 **(3) The maintenance of a field tile within Class II wetland.**
 34 **However, the maintenance described in this subdivision may**
 35 **be authorized only if the field tile:**

36 **(A) is necessary to restore drainage of land adjacent to the**
 37 **wetland; and**

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

39 **(4) The maintenance of a field tile within a Class III wetland.**
 40 **However, the maintenance described in this subdivision may**
 41 **be authorized only if:**

42 **(A) the maintenance of the field tile:**



1 (i) is necessary to restore drainage of land adjacent to
 2 the wetland; and
 3 (ii) does not have the effect of draining the wetland; and
 4 **(B) the applicant obtains a site-specific approval for the**
 5 **maintenance of the field tile under section 12 of this**
 6 **chapter.**

7 **(b) The maintenance of a field tile in a Class I wetland does not**
 8 **require a permit.**

9 (c) The board shall adopt rules under IC 4-22-2 and IC 13-14 ~~not~~
 10 ~~later than February 1, 2005~~, to establish and implement the general
 11 permits described in ~~subsections~~ **subsection (a). and (b):**

12 SECTION 10. IC 13-18-22-6, AS AMENDED BY P.L.147-2015,
 13 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2021]: Sec. 6. (a) Except as otherwise specified in subsections
 15 (b) and (c), compensatory mitigation shall be provided in accordance
 16 with the following table:

17 Wetland Class	18 Replacement Class	19 On-site and 20 In-lieu Fee 21 Ratio	22 Off-site 23 Ratio
20 Class I	21 Class II or III	22 1 to 1	23 1 to 1
21 Class I	22 Class I	23 1.5 1 to 1	24 1.5 1 to 1
22 Class II	23 Class II or III	24 1.5 to 1	25 2 1.5 to 1
		26 Nonforested	27 Nonforested
		28 2 to 1	29 2.5 2 to 1
		30 Forested	31 Forested
26 Class III	27 Class III	28 2 to 1	29 2.5 to 1
		30 Nonforested	31 Nonforested
		32 2.5 to 1	33 3 to 1
		34 Forested	35 Forested

30 (b) The compensatory mitigation ratio shall be lowered to one to one
 31 (1:1) if the compensatory mitigation is completed before the initiation
 32 of the wetland activity.

33 (c) A wetland that is created or restored as a water of the United
 34 States may be used, as an alternative to the creation or restoration of an
 35 isolated wetland, as compensatory mitigation for purposes of this
 36 section. The replacement class of a wetland that is a water of the
 37 United States shall be determined by applying the characteristics of a
 38 Class I, Class II, or Class III wetland, as appropriate, to the replacement
 39 wetland as if it were an isolated wetland.

40 (d) The off-site location of compensatory mitigation must be:
 41 (1) within:
 42 (A) the same eight (8) digit U.S. Geological Service hydrologic



1 unit code; or
 2 (B) the same county;
 3 as the isolated wetlands subject to the authorized wetland activity;
 4 or
 5 (2) within a designated service area established in an in lieu fee
 6 mitigation program approved by the United States Army Corps of
 7 Engineers.
 8 (e) Exempt isolated wetlands may be used to provide compensatory
 9 mitigation for wetlands activities in state regulated wetlands. An
 10 exempt isolated wetland that is used to provide compensatory
 11 mitigation becomes a state regulated wetland.
 12 SECTION 11. IC 13-18-22-7 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 7. (a) The department
 14 shall:
 15 (1) administer the permit programs established by this chapter;
 16 and
 17 (2) review and issue decisions on applications for permits to
 18 undertake wetland activities in state regulated wetlands in
 19 accordance with the rules issued by the board under this chapter.
 20 ~~(b) Before the adoption of rules by the board under this chapter, the~~
 21 ~~department shall:~~
 22 ~~(1) issue individual permits under this chapter consistent with the~~
 23 ~~general purpose of this chapter; and~~
 24 ~~(2) for wetland activities in Class I wetlands, issue permits under~~
 25 ~~this subsection:~~
 26 ~~(A) that are simple, streamlined, and uniform;~~
 27 ~~(B) that do not require development of site specific provisions;~~
 28 ~~and~~
 29 ~~(C) promptly upon submission by the applicant to the~~
 30 ~~department of a notice of registration for a permit.~~
 31 ~~(c) (b) Not later than June 1, 2004, The department shall make~~
 32 ~~available to the public (1) a form for use in applying for a permit under~~
 33 ~~subsection (b)(1); and (2) a form for use in submitting a notice of~~
 34 ~~registration for a permit to undertake a wetland activity in a Class I~~
 35 ~~wetland under subsection (b)(2). **this chapter.**~~
 36 SECTION 12. IC 13-18-22-8 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 8. (a) Subject to
 38 subsection (f), the department shall make a decision to issue or deny an
 39 individual permit under section 3 ~~or 7(b)(1)~~ of this chapter not later
 40 than ~~one hundred twenty (120)~~ **ninety (90)** days after receipt of the
 41 completed application. If the department fails to make a decision on a
 42 permit application by the deadline under this subsection or subsection



1 (f); (d), a permit is considered to have been issued by the department
2 in accordance with the application.

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

9 (c) Except as provided in subsection (d), a permit to undertake a
10 wetland activity in a Class I wetland under section 7(b)(2) of this
11 chapter is considered to have been issued to an applicant on the
12 thirty-first day after the department receives a notice of registration
13 submitted under section 7(b)(2) of this chapter if the department has
14 not previously authorized the wetland activity.

15 (d) The department may deny a registration for a permit for cause
16 under subsection (c) before the period specified in subsection (c)
17 expires.

18 (e) (c) The department must support a denial under subsection (a)
19 or (d) by a written statement of reasons.

20 (f) (d) The department may notify the applicant that the completed
21 application referred to in subsection (a) is deficient. If the department
22 fails to give notice to the applicant under this subsection not later than
23 fifteen (15) days after the department's receipt of the completed
24 application, the application is considered not to have been deficient.
25 After receipt of a notice under this subsection, the applicant may
26 submit an amended application that corrects the deficiency. The
27 department shall make a decision to issue or deny an individual permit
28 under the amended application within a period that ends a number of
29 days after the date the department receives the amended application
30 equal to the remainder of:

- 31 (1) ~~one hundred twenty (120)~~ **ninety (90)** days; minus
- 32 (2) the number of days the department held the initial application
33 before giving a notice of deficiency under this subsection.

34 SECTION 13. IC 13-18-22-12 IS ADDED TO THE INDIANA
35 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
36 [EFFECTIVE JULY 1, 2021]: **Sec. 12. (a) A person seeking to engage**
37 **in maintenance of a field tile within a Class III wetland under**
38 **section 4(a)(4) of this chapter may apply to the department for a**
39 **site-specific approval for the activity in accordance with this**
40 **section and the rules adopted under section 4(c) of this chapter.**

41 (b) An applicant for a site-specific approval under this section
42 must provide information to the department on the need to



1 perform the activity described in subsection (a), including the
2 following:

3 (1) Information showing the location and area needed to be
4 disturbed within the Class III wetland.

5 (2) Lack of reasonable alternatives to the disturbance of the
6 area referred to in subdivision (1).

7 SECTION 14. IC 13-18-23-1 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 1. (a) The department
9 shall **do the following:**

10 (1) Make a final determination on an application for a
11 certification under Section 401 of the Clean Water Act not later
12 than ~~one hundred twenty (120)~~ **ninety (90)** days after its receipt
13 of a complete application ~~and if the applicant meets the~~
14 **condition set forth in subsection (b).**

15 (2) Include in its notice of the final determination to the applicant
16 a statement of reasons for the final determination.

17 (b) **At least thirty (30) days before submitting an application**
18 **under this section, an applicant must contact the department to**
19 **request a pre-coordination meeting.**

20 ~~(b)~~ (c) A failure by the department to act within the period specified
21 ~~in~~ **make a final determination not later than ninety (90) days after**
22 **receiving a complete application, if required under** subsection
23 (a)(1), constitutes a waiver of the certification.

24 SECTION 15. [EFFECTIVE UPON PASSAGE] (a) **The legislative**
25 **council is urged to assign to an appropriate interim study**
26 **committee the task of studying the maintenance and management**
27 **of wetlands in Indiana.**

28 (b) **An interim study committee assigned a study under this**
29 **SECTION shall consider the effect of the maintenance and**
30 **management of wetlands on:**

31 (1) **construction costs;**

32 (2) **flood prevention;**

33 (3) **water pollution from runoff; and**

34 (4) **groundwater resources.**

35 (c) **This SECTION expires January 1, 2022.**

36 SECTION 16. **An emergency is declared for this act.**



COMMITTEE REPORT

Madam President: The Senate Committee on Environmental Affairs, to which was referred Senate Bill No. 389, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 9, after line 17, begin a new paragraph and insert:

"SECTION 16. [EFFECTIVE JULY 1, 2021] **(a) The repeal of IC 13-18-22 by this act extinguishes any judicial or administrative proceeding initiated by the department of environmental management or the commissioner of the department of environmental management concerning an alleged violation of:**

(1) IC 13-18-22;

(2) a rule adopted by the environmental rules board concerning IC 13-18-22; or

(3) the terms of a permit issued under IC 13-18-22.

(b) This SECTION expires July 1, 2022."

and when so amended that said bill do pass.

(Reference is to SB 389 as introduced.)

MESSMER, Chairperson

Committee Vote: Yeas 8, Nays 3.

 COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred Senate Bill 389, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 389 as printed January 27, 2021.)

GUTWEIN

Committee Vote: yeas 12, nays 0.

ES 389—LS 7367/DI 55

