



Reprinted  
April 13, 2021

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**ENGROSSED**  
**SENATE BILL No. 389**

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DIGEST OF SB 389 (Updated April 12, 2021 9:22 pm - DI 55)

**Citations Affected:** IC 13-11; IC 13-18; IC 14-12.

**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 providing that wetland activity may be conducted without a permit: (A) in a Class I wetland; (B) in a Class II wetland with an area of not more than three-eighths acre; (C) in an ephemeral stream; and (D) in a Class II wetland that is located within the boundaries of a municipality and has an area of not  
(Continued next page)

**Effective:** Upon passage; January 1, 2021 (retroactive); July 1, 2021.

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**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)

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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.  
April 12, 2021, read second time, amended, ordered engrossed.

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ES 389—LS 7367/DI 55



## Digest Continued

more than three-fourths acre; (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 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 three-eighths acre requires an individual permit; (5) by providing that: (A) maintenance of a field tile in a Class II wetland can be conducted with a general permit if certain conditions are met; and (B) maintenance of a field tile in a Class III wetland can 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 eliminating the compensatory mitigation requirements for wetland activity in a Class I wetland; 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 federal 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. Establishes the Indiana wetlands task force, a 14 member body that: (1) is required to study and make recommendations concerning a number of wetlands issues; and (2) not later than November 1, 2022, issue a report to the general assembly and the governor setting forth its recommendations. Requires the department of natural resources to provide staff support to the task force.

**ES 389—LS 7367/DI 55**



Reprinted  
April 13, 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

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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 JANUARY 1, 2021 (RETROACTIVE)]:  
3 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.

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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(d), 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 IC 13-18-22-1(b)(6), means surface water flowing or**  
26 **pooling only in direct response to precipitation such as rain or**  
27 **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);~~ **(c)**, is a Class II wetland with an  
 23 area, as delineated, of ~~one-fourth (1/4)~~ **not more than**  
 24 **three-eighths (3/8) acre; or less;**  
 25 (7) is located on land:  
 26 (A) subject to regulation under United States Department of  
 27 Agriculture wetland conservation programs, including  
 28 Swampbuster and the Wetlands Reserve Program, because of  
 29 voluntary enrollment in a federal farm program; and  
 30 (B) used for agricultural or other purposes allowed under the  
 31 programs referred to in clause (A); or  
 32 (8) is constructed for reduction or control of pollution.  
 33 (b) For purposes of subsection (a)(2), an isolated wetland exists as  
 34 an incidental feature:  
 35 (1) if:  
 36 (A) the owner or operator of the property or facility described  
 37 in subsection (a)(2) does not intend the isolated wetland to be  
 38 a wetland;  
 39 (B) the isolated wetland is not essential to the function or use  
 40 of the property or facility; and  
 41 (C) the isolated wetland arises spontaneously as a result of  
 42 damp soil conditions incidental to the function or use of the



- 1 property or facility; and  
 2 (2) if the isolated wetland satisfies any other factors or criteria  
 3 established in rules that are:  
 4 (A) adopted by the board; and  
 5 (B) not inconsistent with the factors and criteria described in  
 6 subdivision (1).
- 7 (e) ~~The total acreage of Class I wetlands on a tract to which the~~  
 8 ~~exemption described in subsection (a)(5) may apply is limited to the~~  
 9 ~~larger of:~~  
 10 (1) ~~the acreage of the largest individual isolated wetland on the~~  
 11 ~~tract that qualifies for the exemption described in subsection~~  
 12 ~~(a)(5); and~~  
 13 (2) ~~fifty percent (50%) of the cumulative acreage of all individual~~  
 14 ~~isolated wetlands on the tract that would qualify for the exemption~~  
 15 ~~described in subsection (a)(5) but for the limitation of this~~  
 16 ~~subsection.~~
- 17 (d) ~~(c)~~ The total acreage of Class II wetlands on a tract to which the  
 18 exemption described in subsection (a)(6) may apply is limited to the  
 19 larger of:  
 20 (1) the acreage of the largest individual isolated wetland on the  
 21 tract that qualifies for the exemption described in subsection  
 22 (a)(6); and  
 23 (2) ~~thirty-three and one-third percent (33 1/3%)~~ **sixty percent**  
 24 **(60%)** of the cumulative acreage of all individual isolated  
 25 wetlands on the tract that would qualify for the exemption  
 26 described in subsection (a)(6) but for the limitation of this  
 27 subsection.
- 28 (e) ~~(d)~~ An isolated wetland described in subsection (a)(5) or (a)(6)  
 29 does not include an isolated wetland on a tract that contains more than  
 30 one (1) of the same class of wetland until the owner of the tract notifies  
 31 the department that the owner has selected the isolated wetland to be  
 32 an exempt isolated wetland under subsection (a)(5) or (a)(6). ~~consistent~~  
 33 ~~with the applicable limitations described in subsections (e) 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 **(6) Dredge and fill activities in an ephemeral stream, as**  
 32 **defined in IC 13-11-2-72.4.**
- 33 **(7) Dredge and fill activities in a Class II wetland that:**
- 34 **(A) is located within the boundaries of a municipality; and**  
 35 **(B) has an area, as delineated, of not more than**  
 36 **three-fourths (3/4) acre.**
- 37 (c) The goal of the permitting program for wetland activities in state  
 38 regulated wetlands is to:
- 39 (1) promote a net gain in high quality isolated wetlands; and  
 40 (2) assure that compensatory mitigation will offset the loss of  
 41 isolated wetlands allowed by the permitting program.
- 42 **(c) If a conflict arises between:**



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

5 (2) the provision in section 3(a) of this chapter under which a  
 6 wetland activity in a Class II wetland with an area, as  
 7 delineated, of more than three-eighths (3/8) acre require an  
 8 individual permit;

9 the exemption in subsection (b)(7) controls.

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

13 (1) in the five (5) years immediately preceding the  
 14 development; or

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

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

27 SECTION 8. IC 13-18-22-3 IS AMENDED TO READ AS  
 28 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 3. (a) ~~The following~~  
 29 ~~shall be authorized by an individual permit: is required to authorize~~

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

34 (2) ~~A~~ Wetland activity in a Class III wetland.

35 (b) ~~Except as provided in section 4(a) of this chapter, an individual~~  
 36 ~~permit is required to authorize a wetland activity in a Class II wetland:~~

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

40 SECTION 9. IC 13-18-22-4 IS AMENDED TO READ AS  
 41 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 4. (a) ~~Wetland~~  
 42 ~~activities with minimal impact in Class I wetlands and Class II~~



wetlands, including the activities analogous to those allowed under the nationwide permit program (as published in 67 Fed. Reg. 2077-2089 (2002)); shall be authorized by a general permit rule. **The following shall be authorized by a general permit:**

**(b) (1) Wetland activities in Class I wetlands shall be authorized by a general permit rule. The maintenance of a field tile within a Class II wetland. However, the maintenance described in this subdivision may be authorized only if the field tile:**

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

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

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

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

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

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

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

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

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

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

Wetland Class	Replacement Class	On-site <b>and In-lieu Fee</b> Ratio	Off-site Ratio
Class I	Class II or III	1 to 1	1 to 1
Class I	Class I	1.5 to 1	1.5 to 1
Class II	Class II or III	1.5 to 1	2 to 1
		Nonforested	Nonforested
		2 to 1	2.5 to 1
		Forested	Forested
Class III	Class III	2 to 1	2.5 to 1
		Nonforested	Nonforested



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2.5 to 1                3 to 1  
Forested                Forested

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

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

- (d) The off-site location of compensatory mitigation must be:
- (1) within:
    - (A) the same eight (8) digit U.S. Geological Service hydrologic unit code; or
    - (B) the same county;
- as the isolated wetlands subject to the authorized wetland activity;
- or
- (2) within a designated service area established in an in lieu fee mitigation program approved by the United States Army Corps of Engineers.

(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.

SECTION 11. IC 13-18-22-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: 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.
- ~~(b) Before the adoption of rules by the board under this chapter, the department shall:~~
- ~~(1) issue individual permits under this chapter consistent with the general purpose of this chapter; and~~
  - ~~(2) for wetland activities in Class I wetlands, issue permits under this subsection:
    - ~~(A) that are simple, streamlined, and uniform;~~
    - ~~(B) that do not require development of site specific provisions;~~~~



1 and

2 ~~(C)~~ promptly upon submission by the applicant to the  
3 department of a notice of registration for a permit.

4 ~~(c)~~ **(b)** Not later than June 1, 2004, The department shall make  
5 available to the public ~~(1)~~ a form for use in applying for a permit under  
6 subsection ~~(b)(1)~~; and ~~(2)~~ a form for use in submitting a notice of  
7 registration for a permit to undertake a wetland activity in a Class I  
8 wetland under subsection ~~(b)(2)~~. **this chapter.**

9 SECTION 12. IC 13-18-22-8 IS AMENDED TO READ AS  
10 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 8. (a) Subject to  
11 subsection (f), the department shall make a decision to issue or deny an  
12 individual permit under section 3 ~~or 7(b)(1)~~ of this chapter not later  
13 than ~~one hundred twenty (120)~~ **ninety (90)** days after receipt of the  
14 completed application. If the department fails to make a decision on a  
15 permit application by the deadline under this subsection or subsection  
16 ~~(f)~~, **(d)**, a permit is considered to have been issued by the department  
17 in accordance with the application.

18 (b) A general permit under section 4 of this chapter becomes  
19 effective with respect to a proposed wetland activity that is within the  
20 scope of the general permit on the thirty-first day after the department  
21 receives a notice of intent from the person proposing the wetland  
22 activity that the wetland activity be authorized under the general  
23 permit.

24 ~~(c)~~ Except as provided in subsection ~~(d)~~, a permit to undertake a  
25 wetland activity in a Class I wetland under section ~~7(b)(2)~~ of this  
26 chapter is considered to have been issued to an applicant on the  
27 thirty-first day after the department receives a notice of registration  
28 submitted under section ~~7(b)(2)~~ of this chapter if the department has  
29 not previously authorized the wetland activity.

30 ~~(d)~~ The department may deny a registration for a permit for cause  
31 under subsection ~~(c)~~ before the period specified in subsection ~~(c)~~  
32 expires.

33 ~~(e)~~ **(c)** The department must support a denial under subsection (a)  
34 ~~or (d)~~ by a written statement of reasons.

35 ~~(f)~~ **(d)** The department may notify the applicant that the completed  
36 application referred to in subsection (a) is deficient. If the department  
37 fails to give notice to the applicant under this subsection not later than  
38 fifteen (15) days after the department's receipt of the completed  
39 application, the application is considered not to have been deficient.  
40 After receipt of a notice under this subsection, the applicant may  
41 submit an amended application that corrects the deficiency. The  
42 department shall make a decision to issue or deny an individual permit



1 under the amended application within a period that ends a number of  
 2 days after the date the department receives the amended application  
 3 equal to the remainder of:

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

7 SECTION 13. IC 13-18-22-12 IS ADDED TO THE INDIANA  
 8 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 9 [EFFECTIVE JULY 1, 2021]: **Sec. 12. (a) A person seeking to engage**  
 10 **in maintenance of a field tile within a Class III wetland under**  
 11 **section 4(a)(2) of this chapter may apply to the department for a**  
 12 **site-specific approval for the activity in accordance with this**  
 13 **section and the rules adopted under section 4(c) of this chapter.**

14 **(b) An applicant for a site-specific approval under this section**  
 15 **must provide information to the department on the need to**  
 16 **perform the activity described in subsection (a), including the**  
 17 **following:**

- 18 **(1) Information showing the location and area needed to be**  
 19 **disturbed within the Class III wetland.**  
 20 **(2) Lack of reasonable alternatives to the disturbance of the**  
 21 **area referred to in subdivision (1).**

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

- 25 (1) Make a final determination on an application for a  
 26 certification under Section 401 of the Clean Water Act not later  
 27 than ~~one hundred twenty (120)~~ **ninety (90)** days after its receipt  
 28 of a complete application ~~and if the applicant meets the~~  
 29 **condition set forth in subsection (b).**  
 30 (2) Include in its notice of the final determination to the applicant  
 31 a statement of reasons for the final determination.

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

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

39 SECTION 15. IC 14-12-4 IS ADDED TO THE INDIANA CODE  
 40 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 41 UPON PASSAGE]:

42 **Chapter 4. Indiana Wetlands Task Force**



1           **Sec. 1. As used in this chapter, "isolated wetland" means a**  
 2 **wetland that:**

3           **(1) is located in Indiana; but**

4           **(2) is not subject to regulation under Section 404(a) of the**  
 5 **federal Clean Water Act.**

6           **Sec. 2. As used in this chapter, "task force" refers to the Indiana**  
 7 **wetlands task force established by section 3 of this chapter.**

8           **Sec. 3. (a) There is established the Indiana wetlands task force.**  
 9 **Subject so subsection (c), the task force consists of the following**  
 10 **fourteen (14) members:**

11           **(1) One (1) individual appointed by the governor as**  
 12 **chairperson of the task force.**

13           **(2) One (1) individual who is a representative of Ducks**  
 14 **Unlimited.**

15           **(3) One (1) individual who is a representative of the Indiana**  
 16 **Builders Association.**

17           **(4) One (1) individual who is a representative of Accelerate**  
 18 **Indiana Municipalities.**

19           **(5) One (1) individual who is a representative of the Indiana**  
 20 **Farm Bureau.**

21           **(6) One (1) individual who is a representative of the White**  
 22 **River Alliance.**

23           **(7) One (1) individual who is a representative of the Indiana**  
 24 **Society of Professional Land Surveyors and has expertise in**  
 25 **regulated drains.**

26           **(8) One (1) individual who is a representative of the**  
 27 **department of environmental management and has expertise**  
 28 **in wetlands.**

29           **(9) One (1) individual who is a representative of the Purdue**  
 30 **University Center for the Environment.**

31           **(10) One (1) individual who is a representative of the**  
 32 **Kankakee River basin and Yellow River basin development**  
 33 **commission established by IC 14-13-9.**

34           **(11) One (1) individual who is a representative of the St.**  
 35 **Joseph River Basin Commission established by IC 14-30-3.**

36           **(12) One (1) individual who is a representative of the Indiana**  
 37 **Association of Soil and Water Conservation Districts.**

38           **(13) One (1) individual who is a professional wetland**  
 39 **delineator.**

40           **(14) One (1) individual appointed by the director of the**  
 41 **department of natural resources who is:**

42           **(A) employed as a biologist or hydrologist for the**



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department; and  
(B) a wetland expert.

(b) The governor shall appoint the members described in subsection (a)(2) through (a)(13).

(c) Each organization or entity identified in subsection (a)(2) through (a)(12) must provide to the governor the name of at least one (1) individual who represents the organization or entity as a candidate for appointment to the task force. If an organization or entity does not, before June 1, 2021, provide to the governor the name of at least one (1) candidate for appointment, the governor may appoint to the task force an individual who is not a representative of the organization or entity in place of a representative of the organization or entity.

(d) A vacancy in a position on the task force shall be filled by the appointment of a replacement member by the appointing authority identified for the task force position in section 3(a) of this chapter.

Sec. 4. (a) The task force shall research and develop recommendations on the following:

- (1) Strategies to mitigate the costs incurred by builders to comply with the state regulation of wetland activity under IC 13-18-22 while maintaining the integrity of those environmental safeguards.
- (2) The flood reduction benefits of isolated wetlands, including the use of isolated wetlands to aid in quantifying flood risk mitigation.
- (3) The role of isolated wetlands in storing carbon dioxide and how to strengthen the carbon markets in Indiana.
- (4) Strategies to incentivize the avoidance of isolated wetland impact during development.
- (5) Strategies to incentivize the preservation of existing isolated wetlands.
- (6) Improvements to the isolated wetland permitting process under IC 13-18-22.

- (b) The task force shall also do the following:
- (1) Review existing state isolated wetland classifications and recommend new isolated wetland classifications and nomenclature that are in alignment with those used by the United States Army Corps of Engineers.
  - (2) Review the current mitigation ratios set forth in IC 13-18-22-6 and provide recommendations to:
    - (A) improve the methodology used in applying those mitigation ratios; and





- 1           **(B) possibly better align those mitigation ratios with the**  
 2           **mitigation ratio determination methods used by the United**  
 3           **States Army Corps of Engineers.**
- 4           **(3) Review the current "in lieu of" compensatory mitigation**  
 5           **program and make recommendations on how to reduce the**  
 6           **costs and improve the transparency of that program.**
- 7           **(4) Study and make recommendations concerning any other**  
 8           **wetland related issues that the task force determines should**  
 9           **be addressed by the general assembly.**
- 10          **Sec. 5. The department of natural resources shall provide staff**  
 11          **support to the task force.**
- 12          **Sec. 6. The task force shall meet at the call of the chairperson.**
- 13          **Sec. 7. (a) A member of the task force who is not a state**  
 14          **employee:**
- 15               **(1) is not entitled to the minimum salary per diem provided by**  
 16               **IC 4-10-11-2.1(b); but**
- 17               **(2) is entitled to reimbursement for traveling expenses as**  
 18               **provided under IC 4-13-1-4 and other expenses actually**  
 19               **incurred in connection with the member's duties as provided**  
 20               **in the state policies and procedures established by the Indiana**  
 21               **department of administration and approved by the budget**  
 22               **agency.**
- 23               **(b) A member of the task force who is a state employee is**  
 24               **entitled to reimbursement for traveling expenses as provided under**  
 25               **IC 4-13-1-4 and other expenses actually incurred in connection**  
 26               **with the member's duties as provided in the state policies and**  
 27               **procedures established by the Indiana department of**  
 28               **administration and approved by the budget agency.**
- 29          **Sec. 8. (a) The members of the task force appointed under**  
 30          **section 3(a)(2) through 3(a)(14) of this chapter are voting**  
 31          **members.**
- 32               **(b) The chairperson appointed under section 3(a)(1) of this**  
 33               **chapter is authorized to vote only when voting by the members of**  
 34               **the task force appointed under section 3(a)(2) through 3(a)(14) of**  
 35               **this chapter results in a tie vote.**
- 36               **(c) The affirmative votes of a majority of the members of the**  
 37               **task force are required for the task force to take action on any**  
 38               **measure, including the report required by section 9 of this chapter.**
- 39          **Sec. 9. The task force shall:**
- 40               **(1) issue a report setting forth the recommendations required**  
 41               **or authorized by section 4 of this chapter; and**  
 42               **(2) not later than November 1, 2022, submit the report to the**



1 following:  
2 (A) The executive director of the legislative services agency  
3 for distribution to the members of the general assembly.  
4 The report submitted to the executive director of the  
5 legislative services agency under this clause must be in an  
6 electronic format under IC 5-14-6.  
7 (B) The governor.  
8 (C) The commissioner of the department of environmental  
9 management.  
10 Sec. 10. This chapter expires December 31, 2022.  
11 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.

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 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



## HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 389 be amended to read as follows:

Page 12, delete lines 24 through 35, begin a new paragraph and insert:

"SECTION 15. IC 14-12-4 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 4. Indiana Wetlands Task Force**

**Sec. 1. As used in this chapter, "isolated wetland" means a wetland that:**

- (1) is located in Indiana; but**
- (2) is not subject to regulation under Section 404(a) of the federal Clean Water Act.**

**Sec. 2. As used in this chapter, "task force" refers to the Indiana wetlands task force established by section 3 of this chapter.**

**Sec. 3. (a) There is established the Indiana wetlands task force. Subject so subsection (c), the task force consists of the following fourteen (14) members:**

- (1) One (1) individual appointed by the governor as chairperson of the task force.**
- (2) One (1) individual who is a representative of Ducks Unlimited.**
- (3) One (1) individual who is a representative of the Indiana Builders Association.**
- (4) One (1) individual who is a representative of Accelerate Indiana Municipalities.**
- (5) One (1) individual who is a representative of the Indiana Farm Bureau.**
- (6) One (1) individual who is a representative of the White River Alliance.**
- (7) One (1) individual who is a representative of the Indiana Society of Professional Land Surveyors and has expertise in regulated drains.**
- (8) One (1) individual who is a representative of the department of environmental management and has expertise in wetlands.**
- (9) One (1) individual who is a representative of the Purdue University Center for the Environment.**
- (10) One (1) individual who is a representative of the Kankakee River basin and Yellow River basin development commission established by IC 14-13-9.**



**(11) One (1) individual who is a representative of the St. Joseph River Basin Commission established by IC 14-30-3.**

**(12) One (1) individual who is a representative of the Indiana Association of Soil and Water Conservation Districts.**

**(13) One (1) individual who is a professional wetland delineator.**

**(14) One (1) individual appointed by the director of the department of natural resources who is:**

**(A) employed as a biologist or hydrologist for the department; and**

**(B) a wetland expert.**

**(b) The governor shall appoint the members described in subsection (a)(2) through (a)(13).**

**(c) Each organization or entity identified in subsection (a)(2) through (a)(12) must provide to the governor the name of at least one (1) individual who represents the organization or entity as a candidate for appointment to the task force. If an organization or entity does not, before June 1, 2021, provide to the governor the name of at least one (1) candidate for appointment, the governor may appoint to the task force an individual who is not a representative of the organization or entity in place of a representative of the organization or entity.**

**(d) A vacancy in a position on the task force shall be filled by the appointment of a replacement member by the appointing authority identified for the task force position in section 3(a) of this chapter.**

**Sec. 4. (a) The task force shall research and develop recommendations on the following:**

**(1) Strategies to mitigate the costs incurred by builders to comply with the state regulation of wetland activity under IC 13-18-22 while maintaining the integrity of those environmental safeguards.**

**(2) The flood reduction benefits of isolated wetlands, including the use of isolated wetlands to aid in quantifying flood risk mitigation.**

**(3) The role of isolated wetlands in storing carbon dioxide and how to strengthen the carbon markets in Indiana.**

**(4) Strategies to incentivize the avoidance of isolated wetland impact during development.**

**(5) Strategies to incentivize the preservation of existing isolated wetlands.**

**(6) Improvements to the isolated wetland permitting process under IC 13-18-22.**



**(b) The task force shall also do the following:**

**(1) Review existing state isolated wetland classifications and recommend new isolated wetland classifications and nomenclature that are in alignment with those used by the United States Army Corps of Engineers.**

**(2) Review the current mitigation ratios set forth in IC 13-18-22-6 and provide recommendations to:**

**(A) improve the methodology used in applying those mitigation ratios; and**

**(B) possibly better align those mitigation ratios with the mitigation ratio determination methods used by the United States Army Corps of Engineers.**

**(3) Review the current "in lieu of" compensatory mitigation program and make recommendations on how to reduce the costs and improve the transparency of that program.**

**(4) Study and make recommendations concerning any other wetland related issues that the task force determines should be addressed by the general assembly.**

**Sec. 5. The department of natural resources shall provide staff support to the task force.**

**Sec. 6. The task force shall meet at the call of the chairperson.**

**Sec. 7. (a) A member of the task force who is not a state employee:**

**(1) is not entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b); but**

**(2) is entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.**

**(b) A member of the task force who is a state employee is entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.**

**Sec. 8. (a) The members of the task force appointed under section 3(a)(2) through 3(a)(14) of this chapter are voting members.**

**(b) The chairperson appointed under section 3(a)(1) of this chapter is authorized to vote only when voting by the members of**



the task force appointed under section 3(a)(2) through 3(a)(14) of this chapter results in a tie vote.

(c) The affirmative votes of a majority of the members of the task force are required for the task force to take action on any measure, including the report required by section 9 of this chapter.

**Sec. 9. The task force shall:**

(1) issue a report setting forth the recommendations required or authorized by section 4 of this chapter; and

(2) not later than November 1, 2022, submit the report to the following:

(A) The executive director of the legislative services agency for distribution to the members of the general assembly. The report submitted to the executive director of the legislative services agency under this clause must be in an electronic format under IC 5-14-6.

(B) The governor.

(C) The commissioner of the department of environmental management.

**Sec. 10. This chapter expires December 31, 2022."**

Renumber all SECTIONS consecutively.

(Reference is to ESB 389 as printed April 8, 2021.)

SLAGER

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#### HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 389 be amended to read as follows:

Page 3, delete lines 7 through 42, begin a new paragraph and insert:

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

(1) that is cultivated for agricultural purposes; and

(2) from which crops are harvested.

**(b) The term includes:**

(1) orchards;

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

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

ES 389—LS 7367/DI 55



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

SECTION 3. IC 13-11-2-72.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 72.4. "Ephemeral stream", for purposes of IC 13-18-22-1(b)(6), means surface water flowing or pooling only in direct response to precipitation such as rain or snowfall.**

SECTION 4. IC 13-11-2-74.5, AS AMENDED BY P.L.113-2014, SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **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); 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) ~~subject to subsection (e);~~ is a Class I wetland; ~~with an area, as delineated, of one-half (1/2) acre or less;~~

(6) subject to subsection ~~(d);~~ **(c)**, is a Class II wetland with an area, as delineated, of ~~one-fourth (1/4)~~ **not more than three-eighths (3/8)** acre; ~~or less;~~

(7) is located on land:

(A) subject to regulation under United States Department of Agriculture wetland conservation programs, including Swampbuster and the Wetlands Reserve Program, because of voluntary enrollment in a federal farm program; and

(B) used for agricultural or other purposes allowed under the programs referred to in clause (A); or

(8) is constructed for reduction or control of pollution.

(b) For purposes of subsection (a)(2), an isolated wetland exists as an incidental feature:

(1) if:

(A) the owner or operator of the property or facility described in subsection (a)(2) does not intend the isolated wetland to be a wetland;

(B) the isolated wetland is not essential to the function or use of the property or facility; and

(C) the isolated wetland arises spontaneously as a result of damp soil conditions incidental to the function or use of the property or facility; and

(2) if the isolated wetland satisfies any other factors or criteria established in rules that are:

(A) adopted by the board; and

(B) not inconsistent with the factors and criteria described in subdivision (1).

~~(c)~~ **(c)** The total acreage of Class I wetlands on a tract to which the exemption described in subsection (a)(5) may apply is limited to the larger of:

(1) the acreage of the largest individual isolated wetland on the tract that qualifies for the exemption described in subsection (a)(5); and

(2) fifty percent (50%) of the cumulative acreage of all individual isolated wetlands on the tract that would qualify for the exemption described in subsection (a)(5) but for the limitation of this subsection.

~~(d)~~ **(c)** The total acreage of Class II wetlands on a tract to which the exemption described in subsection (a)(6) may apply is limited to the



larger of:

- (1) the acreage of the largest individual isolated wetland on the tract that qualifies for the exemption described in subsection (a)(6); and
- (2) ~~thirty-three and one-third percent (33 1/3%)~~ **sixty percent (60%)** of the cumulative acreage of all individual isolated wetlands on the tract that would qualify for the exemption described in subsection (a)(6) but for the limitation of this subsection.

~~(e)~~ **(d)** An isolated wetland described in subsection (a)(5) or (a)(6) does not include an isolated wetland on a tract that contains more than one (1) of the same class of wetland until the owner of the tract notifies the department that the owner has selected the isolated wetland to be an exempt isolated wetland under subsection (a)(5) or (a)(6). ~~consistent with the applicable limitations described in subsections (e) and (d).~~".

Delete page 4.

Page 5, delete lines 1 through 33.

Page 6, delete lines 25 through 42, begin a new paragraph and insert:

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

- (b) A permit is not required for the following wetland activities:
- (1) The discharge of dirt, sand, rock, stone, concrete, or other inert fill materials in a de minimis amount.
  - (2) A wetland activity at a surface coal mine for which the department of natural resources has approved a plan to:
    - (A) minimize, to the extent practical using best technology currently available, disturbances and adverse effects on fish and wildlife;
    - (B) otherwise effectuate environmental values; and
    - (C) enhance those values where practicable.
  - (3) Any activity listed under Section 404(f) of the Clean Water Act, including:
    - (A) normal farming, silviculture, and ranching activities, such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;
    - (B) maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such



as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;

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

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

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

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

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

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

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

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

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

**(7) Dredge and fill activities in a Class II wetland that:**

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

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

(c) The goal of the permitting program for wetland activities in state regulated wetlands is to:

(1) promote a net gain in high quality isolated wetlands; and

(2) assure that compensatory mitigation will offset the loss of isolated wetlands allowed by the permitting program.

**(c) If a conflict arises between:**

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

**(2) the provision in section 3(a) of this chapter under which a**



wetland activity in a Class II wetland with an area, as delineated, of more than three-eighths (3/8) acre require an individual permit;

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

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

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

(2) in the ten (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 under Section 404 of the Clean Water Act.

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

SECTION 8. IC 13-18-22-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 3. (a) ~~The following shall be authorized by an individual permit: is required to authorize~~

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

(2) ~~A~~ Wetland activity in a Class III wetland.

(b) Except as provided in section 4(a) of this chapter, an individual permit is required to authorize a wetland activity in a Class II wetland:

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

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

(b) (1) Wetland activities in Class I wetlands shall be authorized



by a general permit rule. **The maintenance of a field tile within a Class II wetland. However, the maintenance described in this subdivision may be authorized only if the field tile:**

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

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

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

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

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

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

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

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

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

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

Wetland Class	Replacement Class	On-site <b>and In-lieu Fee</b> Ratio	Off-site Ratio
Class I	Class II or III	1 to 1	1 to 1
Class I	Class I	1.5 to 1	1.5 to 1
Class II	Class II or III	1.5 to 1	2 to 1
		Nonforested	Nonforested
		2 to 1	2.5 to 1
		Forested	Forested
Class III	Class III	2 to 1	2.5 to 1
		Nonforested	Nonforested
		2.5 to 1	3 to 1
		Forested	Forested

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



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

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

(1) within:

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

(B) the same county;

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

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

(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."

Delete pages 7 through 9.

Page 10, delete lines 1 through 11.

Page 11, delete lines 34 through 42, begin a new paragraph and insert:

"SECTION 13. IC 13-18-22-12 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2021]: **Sec. 12. (a) A person seeking to engage in maintenance of a field tile within a Class III wetland under section 4(a)(2) of this chapter may apply to the department for a site-specific approval for the activity in accordance with this section and the rules adopted under section 4(c) of this chapter.**

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

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

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

Page 12, delete lines 1 through 6.

Page 12, delete lines 24 through 36.



Renumber all SECTIONS consecutively.

(Reference is to ESB 389 as printed April 8, 2021.)

LINDAUER

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 389 be amended to read as follows:

Page 1, line 2, delete "[EFFECTIVE JULY 1, 2021]" and insert "[EFFECTIVE JANUARY 1, 2021 (RETROACTIVE)]".

(Reference is to ESB 389 as printed April 8, 2021.)

LEONARD

