

PROPOSED AMENDMENT

HB 1383 # 1

DIGEST

Wetlands. Amends current wetlands regulatory scheme.

- 1 Page 1, delete lines 1 through 17.
2 Delete pages 2 through 3.
3 Page 4, delete lines 1 through 4, begin a new paragraph and insert:
4 "SECTION 1. IC 13-11-2-0.8 IS ADDED TO THE INDIANA
5 CODE AS A NEW SECTION TO READ AS FOLLOWS
6 [EFFECTIVE JULY 1, 2024]: **Sec. 0.8. "Acid bog", for purposes of**
7 **IC 13-18-22, means an acidic wetland of kettle holes in glacial**
8 **terrain that can be a floating or quaking mat. The following apply**
9 **to acid bogs:**
10 (1) "Acid bogs" can be graminoid (*Carex* spp. and *Sphagnum*
11 spp.) or low shrub (*Chamaedaphne calyculata* and *Betula*
12 *pumila*).
13 (2) The soils in acid bogs are saturated and acidic peat.
14 (3) Acid bogs are typically found in northern Indiana.
15 SECTION 2. IC 13-11-2-17.5 IS ADDED TO THE INDIANA
16 CODE AS A NEW SECTION TO READ AS FOLLOWS
17 [EFFECTIVE JULY 1, 2024]: **Sec. 17.5. (a) "Bog", for purposes of**
18 **IC 13-18-22, means a sphagnum moss mat layer that rises and falls**
19 **with the water table seasonally and contains peaty and acidic soils**
20 **with nonflowing or very slow flowing water.**
21 (b) Common types of bogs include any of the following:
22 (1) *Carex* spp. (including *C. oligosperma*, *C. canescens*, and *C.*
23 *trisperma*).
24 (2) *Chamaedaphne calyculata*.
25 (3) *Vaccinium* spp. (especially *V. oxycoccus* and *V.*
26 *macrocarpon*).
27 (4) *Dulichium*, *Eriophorum* spp.
28 (5) *Sarracenia purpurea*.

- 1 **(6) Drosera spp.**
- 2 **(c) Bogs often contain one (1) or more of the following:**
- 3 **(1) Rhus vernix.**
- 4 **(2) Larix laricina.**
- 5 **(3) Spiraea tomentosa.**
- 6 **(4) Decodon verticillatus.**
- 7 **(5) Vaccinium corymbosum.**
- 8 **(6) Betula pumila.**
- 9 **(7) Ferns include Osmunda regalis.**
- 10 SECTION 3. IC 13-11-2-25.8 IS REPEALED [EFFECTIVE JULY
- 11 1, 2024]. Sec. 25-8: (a) For purposes of IC 13-18:
- 12 (1) "Class I wetland" means an isolated wetland described by one
- 13 (1) or both of the following:
- 14 (A) At least fifty percent (50%) of the wetland has been
- 15 disturbed or affected by human activity or development by one
- 16 (1) or more of the following:
- 17 (i) Removal or replacement of the natural vegetation;
- 18 (ii) Modification of the natural hydrology;
- 19 (B) The wetland supports only minimal wildlife or aquatic
- 20 habitat or hydrologic function because the wetland does not
- 21 provide critical habitat for threatened or endangered species
- 22 listed in accordance with the Endangered Species Act of 1973
- 23 (16 U.S.C. 1531 et seq.) and the wetland is characterized by at
- 24 least one (1) of the following:
- 25 (i) The wetland is typified by low species diversity;
- 26 (ii) The wetland contains greater than fifty percent (50%)
- 27 areal coverage of non-native invasive species of vegetation;
- 28 (iii) The wetland does not support significant wildlife or
- 29 aquatic habitat;
- 30 (iv) The wetland does not possess significant hydrologic
- 31 function;
- 32 (2) "Class II wetland" means an isolated wetland that supports
- 33 moderate habitat or hydrological functions; including an isolated
- 34 wetland that is dominated by native species but is generally
- 35 without:
- 36 (A) the presence of; or
- 37 (B) habitat for;
- 38 rare, threatened, or endangered species; and
- 39 (3) "Class III wetland" means an isolated wetland:
- 40 (A) that is located in a setting undisturbed or minimally

- 1 disturbed by human activity or development and that supports
 2 more than minimal wildlife or aquatic habitat or hydrologic
 3 function; or
 4 (B) that is of one (1) of the following rare and ecologically
 5 important types:
- 6 (i) Acid bog;
 - 7 (ii) Acid seep;
 - 8 (iii) Circumneutral bog;
 - 9 (iv) Circumneutral seep;
 - 10 (v) Cypress swamp;
 - 11 (vi) Dune and swale;
 - 12 (vii) Fen;
 - 13 (viii) Forested fen;
 - 14 (ix) Forested swamp;
 - 15 (x) Marl beach;
 - 16 (xi) Muck flat;
 - 17 (xii) Panne;
 - 18 (xiii) Sand flat;
 - 19 (xiv) Sedge meadow;
 - 20 (xv) Shrub swamp;
 - 21 (xvi) Sinkhole pond;
 - 22 (xvii) Sinkhole swamp;
 - 23 (xviii) Wet floodplain forest;
 - 24 (xix) Wet prairie;
 - 25 (xx) Wet sand prairie;
- 26 (b) For purposes of this section, a wetland or setting is not
 27 considered disturbed or affected as a result of an action taken after
 28 January 1, 2004, for which a permit is required under IC 13-18-22 but
 29 has not been obtained:
- 30 SECTION 4. IC 13-11-2-36.3 IS AMENDED TO READ AS
 31 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 36.3. "Compensatory
 32 mitigation", for purposes of IC 13-18-22, means the:
- 33 (1) restoration; or
 - 34 (2) creation;
- 35 of wetlands to offset or compensate for a loss of wetlands resulting
 36 from an authorized wetland activity. Wetlands enlargement,
 37 enhancement, and preservation may be considered compensatory
 38 mitigation on a case-by-case basis. ~~particularly for Class III wetlands.~~
- 39 SECTION 5. IC 13-11-2-48.5 IS REPEALED [EFFECTIVE JULY
 40 1, 2024]. Sec. 48.5: (a) "Cropland", for purposes of IC 13-18-22-1(d);

- 1 means farmland:
- 2 (1) that is cultivated for agricultural purposes; and
- 3 (2) from which crops are harvested.
- 4 (b) The term includes:
- 5 (1) orchards;
- 6 (2) farmland used to produce row crops, close-grown crops, or
- 7 cultivated hay; and
- 8 (3) farmland intentionally kept out of production during a regular
- 9 growing season (summer fallow).
- 10 (c) The term does not include pasture land unless the pasture land
- 11 is in active rotation with cultivated crops for purposes of soil
- 12 maintenance or improvement.

13 SECTION 6. IC 13-11-2-61.2 IS ADDED TO THE INDIANA

14 CODE AS A NEW SECTION TO READ AS FOLLOWS

15 [EFFECTIVE JULY 1, 2024]: **Sec. 61.2. (a) "Dune and swale", for**

16 **purposes of IC 13-18-22, means an ecological system consisting of**

17 **a mixture of:**

- 18 (1) upland black oak sand savanna;
- 19 (2) dry to mesic sand prairie;
- 20 (3) wetland pond;
- 21 (4) panne;
- 22 (5) sedge meadow;
- 23 (6) marsh; and
- 24 (7) wet prairie natural communities;
- 25 that occurs in long, narrow, linear complexes, with the dry
- 26 communities occupying sand ridges and the wet communities
- 27 occurring in the intervening swales.

28 (b) The following are found in the swales:

- 29 (1) Black oak (*quercus velutina*).
- 30 (2) Paper birch (*betula papyrifera*).
- 31 (3) Jack pine (*pinus banksiana*).
- 32 (4) Prairie vegetation.
- 33 (5) Sedges.
- 34 (6) Reeds.

35 (c) Dune and swale is restricted to extreme northwest Indiana,

36 near Lake Michigan.

37 SECTION 7. IC 13-11-2-66.6 IS ADDED TO THE INDIANA

38 CODE AS A NEW SECTION TO READ AS FOLLOWS

39 [EFFECTIVE JULY 1, 2024]: **Sec. 66.6. "Emergent wetland", for**

40 **purposes of IC 13-18-22, means a wetland that:**

- 1 **(1) is dominated by woody plants less than three and**
 2 **twenty-eight hundredths (3.28) feet tall;**
 3 **(2) contains erect and rooted herbaceous hydrophytes,**
 4 **excluding mosses and lichens; or**
 5 **(3) has a combination of plants described in subdivisions (1)**
 6 **and (2);**
 7 **that are present for most of the growing season.**

8 SECTION 8. IC 13-11-2-72.4 IS REPEALED [EFFECTIVE JULY
 9 1, 2024]. Sec. 72.4. "Ephemeral stream", for purposes of
 10 ~~IC 13-18-22-1(b)(6)~~, means surface water flowing or pooling only in
 11 direct response to precipitation such as rain or snowfall."

12 Page 4, line 16, reset in roman "IC 13-18-22-6(e);".

13 Page 4, line 16, delete "IC 13-18-22-6(g);".

14 Page 4, delete lines 39 through 42, begin a new line block indented
 15 and insert:

16 "~~(5)~~ is a Class I wetland;

17 ~~(6)~~ subject to subsection (c), is a Class H wetland with an area, as
 18 delineated, of not more than three-eighths (3/8) acre;

19 ~~(7)~~ **(5)** is located on land:

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

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

26 **(C) has not been converted to another land use, including**
 27 **from one type of farming use to another; or**

28 ~~(8)~~ **(6)** is constructed for reduction or control of pollution.

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

31 (1) if:

32 **(A) the isolated wetland results inadvertently from a use of**
 33 **the land;**

34 **(B) the isolated wetland is not within the land's normal**
 35 **circumstances as defined by the Wetlands Delineation**
 36 **Manual, Technical Report Y-87-1 of the United States**
 37 **Army Corps of Engineers; and**

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

- 1 ~~(B) the isolated wetland is not essential to the function or use~~
 2 ~~of the property or facility; and~~
 3 (C) the isolated wetland arises spontaneously as a result of
 4 damp soil conditions incidental to the function or use of the
 5 property or facility; and
 6 (2) if the isolated wetland satisfies any other factors or criteria
 7 established in rules that are:
 8 (A) adopted by the board; and
 9 (B) not inconsistent with the factors and criteria described in
 10 subdivision (1).
 11 (c) ~~The total acreage of Class H wetlands on a tract to which the~~
 12 ~~exemption described in subsection (a)(6) may apply is limited to the~~
 13 ~~larger of:~~
 14 (1) ~~the acreage of the largest individual isolated wetland on the~~
 15 ~~tract that qualifies for the exemption described in subsection~~
 16 ~~(a)(6); and~~
 17 (2) ~~sixty percent (60%) of the cumulative acreage of all individual~~
 18 ~~isolated wetlands on the tract that would qualify for the exemption~~
 19 ~~described in subsection (a)(6) but for the limitation of this~~
 20 ~~subsection.~~
 21 (d) ~~An isolated wetland described in subsection (a)(5) or (a)(6) does~~
 22 ~~not include an isolated wetland on a tract that contains more than one~~
 23 ~~(1) of the same class of wetland until the owner of the tract notifies the~~
 24 ~~department that the owner has selected the isolated wetland to be an~~
 25 ~~exempt isolated wetland under subsection (a)(5) or (a)(6)."~~

26 Delete pages 5 through 13.

27 Page 14, delete lines 1 through 36, begin a new paragraph and
 28 insert:

29 "SECTION 11. IC 13-11-2-77.5 IS ADDED TO THE INDIANA
 30 CODE AS A NEW SECTION TO READ AS FOLLOWS
 31 [EFFECTIVE JULY 1, 2024]: **Sec. 77.5. "Farmed wetland", for**
 32 **purposes of IC 13-18-22, means a wetland where:**

33 **(1) the soil surface of the wetland has been:**

34 **(A) mechanically;**

35 **(B) chemically; or**

36 **(C) physically;**

37 **altered for production of crops;**

38 **(2) indicators of hydric soil and wetland hydrology are**
 39 **present; and**

40 **(3) hydrophytes would reestablish if the crop farming were**

- 1 **discontinued.**
- 2 SECTION 12. IC 13-11-2-79.3 IS ADDED TO THE INDIANA
- 3 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 4 [EFFECTIVE JULY 1, 2024]: **Sec. 79.3. (a) "Fen" for purposes of**
- 5 **IC 13-18-22, means:**
- 6 **(1) sphagnum moss mat absent; and**
- 7 **(2) soils muck or poorly drained minerals soils, alkaline or**
- 8 **circum-neutral;**
- 9 **often located on sloping sites with spring-fed calcareous water.**
- 10 **Communities of fen vary from herbaceous to shrubby to more or**
- 11 **less forested.**
- 12 **(b) Common types of fen include:**
- 13 **(1) Potentilla fruticose;**
- 14 **(2) Physocarpus opulifolius;**
- 15 **(3) Cornus stolonifera; and**
- 16 **(4) sometimes Betula pumila.**
- 17 **(c) Characteristic fen include:**
- 18 **(1) Carex sterilis;**
- 19 **(2) Eleocharis spp.;**
- 20 **(3) Filipendula rubra;**
- 21 **(4) Parnassia glauca;**
- 22 **(5) Solidago ohioensis;**
- 23 **(6) S. riddellii;**
- 24 **(7) Cirsium muticum;**
- 25 **(8) Lobelia kalmia;**
- 26 **(9) Aster puniceus;**
- 27 **(10) Gentianopsis procera;**
- 28 **(11) Gentiana crinite;**
- 29 **(12) Cacalia spp.;**
- 30 **(13) Pedicularis lanceolatus;**
- 31 **(14) Selaginella apoda;**
- 32 **(15) Zizia aurea;**
- 33 **(16) Symplocarpus foetidus;**
- 34 **(17) Caltha palustris;**
- 35 **(18) tree dominated; and**
- 36 **(19) prairie swales.**
- 37 **(d) Fens can be found in central and northern Indiana.**
- 38 SECTION 13. IC 13-11-2-85.8 IS ADDED TO THE INDIANA
- 39 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 40 [EFFECTIVE JULY 1, 2024]: **Sec. 85.8. "Forested wetland", for**

1 **purposes of IC 13-18-22, is a wetland dominated by woody plants**
 2 **three (3) inches or more in diameter at breast height regardless of**
 3 **height.**

4 SECTION 16. IC 13-11-2-178.3 IS ADDED TO THE INDIANA
 5 CODE AS A NEW SECTION TO READ AS FOLLOWS
 6 [EFFECTIVE JULY 1, 2024]: **Sec. 178.3. "Rare and unique**
 7 **wetlands", for purposes of IC 13-18-22, means:**

- 8 (1) **dune and swale;**
- 9 (2) **sinkhole swamp;**
- 10 (3) **fen;**
- 11 (4) **bog; and**
- 12 (5) **acid bog.**

13 SECTION 14. IC 13-11-2-196.7 IS ADDED TO THE INDIANA
 14 CODE AS A NEW SECTION TO READ AS FOLLOWS
 15 [EFFECTIVE JULY 1, 2024]: **Sec. 196.7. "Scrub-shrub wetland",**
 16 **for purposes of IC 13-18-22, means a wetland that is dominated by**
 17 **tree saplings, bushes, shrubs, and other woody vegetation less than**
 18 **three (3) inches in diameter at breast height and greater than three**
 19 **and twenty-eight hundredths (3.28) feet tall.**

20 SECTION 15. IC 13-11-2-202.9 IS ADDED TO THE INDIANA
 21 CODE AS A NEW SECTION TO READ AS FOLLOWS
 22 [EFFECTIVE JULY 1, 2024]: **Sec. 202.9. (a) "Sinkhole swamp", for**
 23 **purposes of IC 13-18-22, means a depressions in karst topography.**

24 **(b) Sinkhole swamps are found in the Mitchell Karst Plain in**
 25 **south-central Indiana.**

26 SECTION 9. IC 13-11-2-265.8, AS AMENDED BY P.L.160-2021,
 27 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2024]: **Sec. 265.8. For purposes of this chapter and**
 29 **IC 13-18-22:**

- 30 (1) "wetlands delineation" or "delineation" means a technical
 31 assessment:
 - 32 (A) of whether a wetland exists on an area of land; and
 - 33 (B) if so, of the type and ~~quality~~ **boundary** of the wetland
 34 based on the presence or absence of wetlands characteristics,
 35 as determined consistently with the Wetlands Delineation
 36 Manual, Technical Report Y-87-1 of the United States Army
 37 Corps of Engineers **and the appropriate regional**
 38 **supplement;** and
- 39 (2) **the term "delineated" describes property that has undergone**
 40 **wetlands delineation.**

1 SECTION 17. IC 13-18-22-1, AS AMENDED BY P.L.247-2023,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2024]: Sec. 1. (a) **The following definitions apply in this**
4 **section:**

5 (1) **"Cultivating"** means physical methods of soil treatment
6 employed within established farming, ranching, and
7 silviculture lands on farm, ranch, or forest crops to aid and
8 improve their:

9 (A) growth;

10 (B) quality; or

11 (C) yield.

12 (2) **"Harvesting"** means physical measures employed directly
13 upon farm, forest, or ranch crops within established
14 agricultural and silvicultural lands to bring about their
15 removal from farm, forest, or ranch land, but does not include
16 the construction of farm, forest, or ranch roads.

17 (3) **"Minor drainage"** is limited to drainage within areas that
18 are part of an established farming or silviculture operation,
19 and include the discharge of dredged or fill material:

20 (A) incidental to connecting upland drainage facilities to
21 waters of Indiana, adequate to effect the removal of excess
22 soil moisture from upland croplands;

23 (B) for the purpose of installing ditching or other such
24 water control facilities incidental to planting, cultivating,
25 protecting, or harvesting of wetland crop species, where
26 these activities and the discharge occur in waters of
27 Indiana, which are in established use for such agricultural
28 and silvicultural wetland crop production;

29 (C) for the purpose of manipulating the water levels of, or
30 regulating the flow or distribution of water within, existing
31 impoundments that have been constructed in accordance
32 with applicable requirements of the Clean Water Act and
33 the Indiana Code, and which are in established use for the
34 production of wetland crop species; or

35 (D) incidental to the emergency removal of sandbars,
36 gravel bars, or other similar blockages that are formed
37 during flood flows or other events, where the blockages
38 close or constrict previously existing drainageways and, if
39 not promptly removed, would result in damage to or loss
40 of existing crops or would impair or prevent the plowing,

1 seeding, harvesting, or cultivating of crops on land in
 2 established use for crop production. Such removal does not
 3 include enlarging or extending the dimensions of, or
 4 changing the bottom elevations of, the affected
 5 drainageway as it existed before the formation of the
 6 blockage. Removal must be accomplished within one (1)
 7 year of discovery of the blockages in order to be eligible for
 8 the exception.

9 The term does not include a drainage associated with the
 10 immediate or gradual conversion of a wetland to a
 11 nonwetland, a conversion from one (1) wetland use to another
 12 (such as farming to silviculture), and the construction of any
 13 canal, ditch, dike, or any other waterway or structure that
 14 drains or otherwise significantly modifies a stream, lake, bog,
 15 or any other wetland or aquatic area constituting a water of
 16 Indiana. Any discharge of dredged or fill material into the
 17 waters of Indiana incidental to the construction of any such
 18 structure or waterway, requires a permit.

19 (4) "Plowing" means all forms of primary tillage, including
 20 moldboard, chisel, or wide-blade plowing, discing, harrowing
 21 and similar physical means used on farm, forest, or ranch
 22 land for the breaking up, cutting, turning over, or stirring of
 23 soil to prepare it for the planting of crops. The term does not
 24 include:

25 (A) the redistribution of soil, rock, sand, or other surficial
 26 materials in a manner that changes any area of the waters
 27 of the state to dry land;

28 (B) rock crushing activities, which result in the loss of
 29 natural drainage characteristics, the reduction of water
 30 storage and recharge capabilities, or the overburden of
 31 natural water filtration capacities; or

32 (C) the discharge of dredged or fill material.

33 (5) "Seeding" means the sowing of seed and placement of
 34 seedlings to produce farm, ranch, or forest crops and includes
 35 the placement of soil beds for seeds or seedlings on established
 36 farm and forest lands.

37 (a) (b) Except as provided in subsection (b); (c), a person proposing
 38 a wetland activity in a state regulated wetland must obtain a permit
 39 under this chapter to authorize the wetland activity.

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

- 1 (1) The discharge of dirt, sand, rock, stone, concrete, or other
2 inert fill materials in a de minimis amount.
- 3 (2) A wetland activity at a surface coal mine for which the
4 department of natural resources has approved a plan to:
- 5 (A) minimize, to the extent practical using best technology
6 currently available, disturbances and adverse effects on fish
7 and wildlife;
- 8 (B) otherwise effectuate environmental values; and
- 9 (C) enhance those values where practicable.
- 10 (3) Any activity listed under Section 404(f) of the Clean Water
11 Act, including:
- 12 (A) normal farming, silviculture, and ranching activities, such
13 as plowing, seeding, cultivating, minor drainage, harvesting
14 for the production of food, fiber, and forest products, or upland
15 soil and water conservation practices **occurring at an active**
16 **farming, silviculture, or ranching operation;**
- 17 (B) maintenance, including emergency reconstruction of
18 recently damaged parts, of currently serviceable structures
19 such as dikes, dams, levees, groins, riprap, breakwaters,
20 causeways, and bridge abutments or approaches, and
21 transportation structures;
- 22 (C) construction or maintenance of farm or stock ponds or
23 irrigation ditches, or the maintenance of drainage ditches;
- 24 (D) construction of temporary sedimentation basins on a
25 construction site that does not include placement of fill
26 material into the navigable waters; and
- 27 (E) construction or maintenance of farm roads or forest roads,
28 or temporary roads for moving mining equipment, where the
29 roads are constructed and maintained, in accordance with best
30 management practices, to assure that:
- 31 (i) flow and circulation patterns and chemical and biological
32 characteristics of the navigable waters are not impaired;
- 33 (ii) the reach of the navigable waters is not reduced; and
- 34 (iii) any adverse effect on the aquatic environment will be
35 otherwise minimized.
- 36 (4) The maintenance or reconstruction (as defined in
37 IC 36-9-27-2) of a regulated drain in accordance with
38 IC 36-9-27-29(2) as long as the work takes place within the
39 current easement, and the reconstruction does not substantially
40 change the characteristics of the drain to perform the function for

- 1 which it was designed and constructed.
- 2 (5) Wetland activities in an exempt isolated wetland, as defined
3 in IC 13-11-2-74.5.
- 4 (6) Dredge and fill activities in an ephemeral stream; as defined
5 in IC 13-11-2-72.4.
- 6 (7) Dredge and fill activities in a Class H wetland that:
- 7 (A) is located within the boundaries of a municipality; and
8 (B) has an area, as delineated; of not more than three-fourths
9 $(3/4)$ acre.
- 10 (8) (6) The activities of a forestry operation that are:
- 11 (A) conducted in compliance with the Indiana Logging and
12 Forestry Best Management Practices Field Guide published by
13 the department of natural resources; and
14 (B) confined to a waterway that has a watershed not greater
15 than ten (10) square miles.
- 16 A state permit will be required if there are permanent negative
17 impacts to isolated wetlands outside of a waterway or the
18 activities conducted fail to comply with the Indiana Logging and
19 Forestry Best Management Practices Field Guide.
- 20 (e) If a conflict arises between:
- 21 (1) the provision in subsection (b)(7) under which dredge and fill
22 activities in a Class H wetland with an area, as delineated; of not
23 more than three-fourths $(3/4)$ acre do not require a permit; and
24 (2) the provision in section 3(a) of this chapter under which a
25 wetland activity in a Class H wetland with an area, as delineated;
26 of more than three-eighths $(3/8)$ acre require an individual permit;
27 the exemption in subsection (b)(7) controls.
- 28 (d) The development of cropland; as defined in IC 13-11-2-48.5;
29 does not require a permit under this chapter if the cropland has been
30 used for agricultural purposes:
- 31 (1) in the five (5) years immediately preceding the development;
32 or
33 (2) in the ten (10) years immediately preceding the development;
34 if the United States Army Corps of Engineers has issued a
35 jurisdictional determination confirming that the cropland does not
36 contain wetlands subject to federal jurisdiction under Section 404
37 of the Clean Water Act.
- 38 After receiving a jurisdictional determination described in subdivision
39 (2) from the United States Army Corps of Engineers; the department
40 shall notify the person proposing the wetland activity that the

1 development of the cropland used for agricultural purposes in the
 2 immediately preceding ten (10) years is exempt from the permit
 3 requirement of subsection (a) under subdivision (2):

4 SECTION 18. IC 13-18-22-2, AS AMENDED BY P.L.2-2005,
 5 SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2024]: Sec. 2. (a) The board may adopt rules under IC 4-22-2
 7 and IC 13-14 **not later than July 1, 2025.** ~~not later than February 1,~~
 8 ~~2005,~~ to implement the part of the definition of Class I wetland under
 9 ~~IC 13-11-2-25.8(a)(1)(B):~~

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

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

19 SECTION 19. IC 13-18-22-3, AS AMENDED BY P.L.160-2021,
 20 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2024]: Sec. 3. (a) The following shall be authorized by an
 22 individual permit:

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

27 (2) Wetland activity in a Class III wetland:

28 (1) Activity in a wetland that causes a combined impact of
 29 greater than or equal to one-half (1/2) acre in size to the
 30 wetland.

31 (2) Any impact to a rare and unique wetland of any size (as
 32 defined in IC 13-11-2-178.3).

33 (b) The board shall adopt rules under IC 4-22-2 and IC 13-14 to
 34 govern the issuance of individual permits by the department under
 35 subsection (a).

36 SECTION 20. IC 13-18-22-4, AS AMENDED BY P.L.160-2021,
 37 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2024]: Sec. 4. (a) The following shall be authorized by a
 39 general permit:

40 (1) ~~The maintenance of a field tile within a Class H wetland:~~

1 However, the maintenance described in this subdivision may be
2 authorized only if the field tile:

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

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

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

9 (A) the maintenance of the field tile:

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

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

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

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

17 **(1) Activity in a wetland that causes a combined impact of less**
18 **than one-half (1/2) an acre in size to the wetland.**

19 **(2) The wetland is not a rare and unique wetland (as defined**
20 **in IC 13-11-2-178.3).**

21 (e) **(b)** The board shall adopt rules under IC 4-22-2 and IC 13-14 to
22 establish and implement the general permits described in subsection
23 (a).

24 SECTION 21. IC 13-18-22-5 IS AMENDED TO READ AS
25 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 5. (a) The rules adopted
26 **for the issuance of individual permits** under section 3 of this chapter:

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

29 (A) is:

30 (i) without reasonable alternative; and

31 (ii) reasonably necessary or appropriate;

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

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

39 (2) ~~except as provided in subsection (c);~~ must establish that
40 **efforts were taken to avoid and minimize impacts, and**

1 compensatory mitigation will be provided as set forth in section
2 6 of this chapter to reasonably offset the loss of wetlands allowed
3 by the permits; and

4 (3) may prescribe additional conditions that are reasonable and
5 necessary to carry out the purposes of this chapter.

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

11 (1) identifies the wetlands to be affected by the wetland activity;
12 and

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

17 (c) ~~Under subsections (a) and (b); the rules adopted under sections~~
18 ~~3 and 4 of this chapter may provide for exceptions to compensatory~~
19 ~~mitigation in specific, limited circumstances:~~

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

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

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

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

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

32 Wetland	Replacement	On-site and	Off-site
33 Class	Class	In-lieu Fee	Ratio
		Ratio	
35 Class II	Class II or III	1.5 to 1	2 to 1
		Nonforested	Nonforested
		2 to 1	2.5 to 1
		Forested	Forested
39 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.

Wetland Type	Ratio
Farmed	1:1
Emergent/scrub-shrub	1:1
Forested	2.5:1
Bogs/fens/dune swale/ sinkhole wetland	10:1

(b) Impacts to less than one-tenth (0.1) acre of a wetland do not require compensatory mitigation.

(c) The permittee's compensatory mitigation requirements shall occur in accordance with the standards and guidelines set forth in 33 CFR 332 and through the use of one (1) or more of the following mechanisms set forth in order of preference:

- (1) A mitigation bank (as defined in 33 CFR 332).
- (2) The Indiana stream and wetland mitigation program.
- (3) Permittee-responsible mitigation in accordance with subsection (d).

(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.

(d) The permittee-responsible location of compensatory mitigation must be within the same Indiana stream and wetland

1 **mitigation program service area.**

2 (e) Exempt isolated wetlands may be used to provide compensatory
3 mitigation for wetlands activities in state regulated wetlands. An
4 exempt isolated wetland that is used to provide compensatory
5 mitigation becomes a state regulated wetland.

6 **(f) Violations of this section shall require an application for an
7 after-the-fact permit and increased mitigation ratios not less than
8 double the ratios specified in subsection (a).**

9 SECTION 23. IC 13-18-22-7, AS AMENDED BY P.L.160-2021,
10 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2024]: Sec. 7. (a) The department shall:

12 (1) administer the permit programs established by this chapter;

13 **and**

14 (2) review and issue decisions on applications for permits to
15 undertake wetland activities in state regulated wetlands in
16 accordance with the rules issued by the board under this chapter;

17 **and**

18 **(3) coordinate with the department of natural resources
19 before issuing a decision for a permit for wetland activity to
20 an applicant.**

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

23 **(c) Before the issuance of a permit under this chapter, the
24 department shall publish public notice of the receipt of an
25 application for a state regulated wetland individual or general
26 permit. The public notice shall also provide information about how
27 to access the application, where to submit public comments on the
28 application, and the inclusive dates of the comment period, which
29 shall be not less than thirty (30) days.**

30 **(d) The department shall serve notice to adjacent property
31 owners, other state and federal agencies, and any person who has
32 requested to receive public notices for state regulated individual or
33 general wetland permit applications.**

34 **(e) The department shall not make any agency decision on the
35 application until the thirty (30) day public notice and comment
36 period has expired and all comments have been addressed.**

37 SECTION 24. IC 13-18-22-9 IS AMENDED TO READ AS
38 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 9. (a) The owner of a
39 ~~Class III~~ wetland may petition the board for designation of the wetland
40 as an outstanding state protected wetland. Upon verification by the

1 board that the ~~wetland is a Class III wetland and that the~~ petitioner is
2 the owner of the wetland, the board shall conduct a proceeding under
3 IC 4-22-2 and IC 13-14 to adopt a rule designating the wetland as an
4 outstanding state protected wetland.

5 (b) A rule adopted by the board under subsection (a) must
6 specifically identify each wetland to be designated as an outstanding
7 state protected wetland, including:

- 8 (1) the wetland type;
- 9 (2) a legal description of the wetland as delineated; and
- 10 (3) other information considered necessary by the board.

11 (c) The owner of a ~~Class III~~ wetland designated as an outstanding
12 state protected wetland under this section shall:

13 (1) not cause or allow any anthropogenic activities on the property
14 on which the wetland is located that may adversely affect or
15 degrade the wetland, except for activities with minimal and short
16 term effect, such as construction of an observation pathway or
17 installation of an underground pipeline that are:

- 18 (A) authorized by rules adopted by the board; or
- 19 (B) approved by the department in the absence of rules under
20 clause (A); and

21 (2) provide for the long term assurance of the protections
22 described in subdivision (1) through:

- 23 (A) a restrictive covenant that is recorded with respect to the
24 property on which the delineated wetland is located; or
- 25 (B) a grant of title to or a conservation easement in the property
26 on which the delineated wetland is located to:
 - 27 (i) the department of natural resources; or
 - 28 (ii) a nonprofit entity with demonstrated ability in the
29 maintenance and protection of wetlands.

30 (d) Notwithstanding the designation of a wetland under this section
31 by the board as an outstanding state protected wetland, the owner of a
32 ~~Class III~~ wetland may petition the board for rescission of the
33 designation if the owner can demonstrate important social or economic
34 needs that warrant adverse effects to the wetland. In its review of the
35 petition, the board shall give great weight to a resolution of the
36 legislative body of the municipality or county in which the ~~Class III~~
37 wetland is located describing important social or economic needs, the
38 accomplishment of which would necessitate adverse effects to the
39 wetland.

40 SECTION 25. IC 13-18-22-11 IS AMENDED TO READ AS

1 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 11. When land referred
 2 to in IC 13-11-2-74.5(a)(7) is no longer subject to United States
 3 Department of Agriculture wetland conservation rules:

4 (1) isolated wetlands located on the land are subject to this
 5 chapter; and

6 (2) any past wetland activities in the isolated wetlands located on
 7 the land become subject to this chapter. ~~unless the wetland~~
 8 ~~activities were in compliance with United States Department of~~
 9 ~~Agriculture wetland conservation rules.~~

10 SECTION 26. IC 13-18-22-12 IS REPEALED [EFFECTIVE JULY
 11 1, 2024]. ~~Sec. 12: (a) A person seeking to engage in maintenance of a~~
 12 ~~field tile within a Class III wetland under section 4(a)(2) of this chapter~~
 13 ~~may apply to the department for a site-specific approval for the activity~~
 14 ~~in accordance with this section and the rules adopted under section 4(c)~~
 15 ~~of this chapter.~~

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

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

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

23 Renumber all SECTIONS consecutively.

(Reference is to HB 1383 as introduced.)