



INDIANA ASSOCIATION for FLOODPLAIN
and STORMWATER MANAGEMENT

Legislative Report
March 19, 2021

2021 Indiana General Assembly

Bills of INAFSM Interest

Senate Bill 389: *Repeal of State Regulated Wetlands Law - Only*

Senate Bill 389 Repeal of State Regulated Wetlands Law

<http://iga.in.gov/legislative/2021/bills/senate/389>

Introduced by Senators Garten, Messmer, Rogers Referred to Senate Committee on
Environmental Affairs

Committee Hearing Date: January 25, 2021 at 10:00 a.m. in the Senate Chamber

Committee Vote: 8-3 in favor of bill

2nd Reading Date: January 28, 2021

3rd Reading Date: February 1, 2021

Senate Vote: 29 – 19 in favor of bill

Bill assigned to House Committee on Natural Resources

House Committee Hearing: **Monday March 22 at 10:30 a.m. in the Indiana Government Center South**

2nd Reading Date:

3rd Reading Date:

House Vote:

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

What it Means: Those wetlands not protected by federal regulations, usually wetlands isolated in the landscape, are covered by the State Regulated Wetlands Law. This bill would eliminate those protections and allow impacts to these wetlands with no permitting or mitigation.

INAFSM Position: The elimination of protections for isolated wetlands will lead to these storage areas being filled and adverse impacts to streams, floodplains, and existing properties. With reduced storage in watersheds statewide, runoff will increase, and water quality will decrease.

With regards to the legislative process, it appears this is as much an anti-IDEM bill as an anti-wetlands bill. Committee Chairman Messmer remarked after the bill passed out of the committee that he fully expects the bill to be revised as it moves through the legislative process. The three Democratic members of the committee recommended that the issues associated with isolated wetlands be studied for potential future action.

By the time the bill passed the Senate it had acquired 19 co-sponsors to go along with the three bill authors and the three original co-sponsors. However, the bill did have nine Republicans voting against the bill at Third Reading in the Senate and the Governor has expressed some concerns with the bill.

NEW: The bill will be amended due to concerns raised by the House Environmental Affairs Committee Chairperson, and others, regarding the bill language. The new bill language is attached.

After consideration, INAFM's position is that the issue of isolated wetlands and what changes, if any, should be made to the existing isolated wetlands program in Indiana should be carefully examined in a study committee. The issue is complicated and only a deliberate analysis of the matters surrounding isolated wetlands can provide reasonable solutions.

For your information, the House Environmental Affairs Committee Members and their contact information is provided below.

Representative Doug Gutwein, Republican – Committee Chairperson

Phone: 800-382-9841

Email: h16@iga.in.gov

Legislative Assistant: Jake Carrico

Phone: 317-234-9139

Email: jacob.carrico@iga.in.gov

Representative Mike Speedy, Republican – Committee Vice Chairperson

Phone: 800-382-9841

Email: h90@iga.in.gov

Legislative Assistant: Whitney Peterson

Phone: 317-232-9815

Email: whiteney.peterson@iga.in.gov

Representative Mike Aylesworth, Republican

Phone: 800-382-9841

Email: h11@iga.in.gov

Legislative Assistant: Conner McCarthy

Phone: 317-234-9447

Email: conner.mccarthy@iga.in.gov

Representative Beau Baird, Republican

Phone: 800-382-9841

Email: h44@iga.in.gov

Legislative Assistant: Bethany Schrock

Phone: 317-232-9981

Email: bethany.schrock@iga.in.gov

Representative John Jacob, Republican

Phone: 800-382-9841

Email: h93@iga.in.gov

Legislative Assistant: Evan Eagleson

Phone: 317-232-9648

Email: evan.eagleson@iga.in.gov

Representative Don Lehe, Republican

Phone: 800-382-9841

Email: h25@iga.in.gov

Legislative Assistant: Lewis Ostermeyer

Phone: 317-232-9816

Email: lewis.ostermeyer@iga.in.gov

Representative J.D. Prescott, Republican
Phone: 800-382-9841
Email: h33@iga.in.gov
Legislative Assistant: Dolan Monroe
Phone: 317-234-3827
Email: dolan.monroe@iga.in.gov

Representative Harold Slager, Republican
Phone: 800-382-9841
Email: h15@iga.in.gov
Legislative Assistant: Matthew LoPrete
Phone: 317-232-9833
Email: matthew.loprete@iga.in.gov

Representative Jeffrey Thompson, Republican
Phone: 800-382-9841
Email: h28@iga.in.gov
Legislative Assistant: Emily Skooglund
Phone: 317-232-9651
Email: emily.skooglund@iga.in.gov

Representative Sue Errington, Democrat – Committee Ranking Minority Member
Phone: 800-382-9842
Email: h34@iga.in.gov
Legislative Assistant: Shelby Baumgartner
Phone: 317-233-5248
Email: shelby.baumgartner@iga.in.gov

Representative Maureen Bauer, Democrat
Phone: 800-382-9842
Email: h6@iga.in.gov
Legislative Assistant: Jalen Jones
Phone: 317-234-3101
Email: jalen.jones@iga.in.gov

Representative Pat Boy, Democrat
Phone: 800-382-9842
Email: h9@iga.in.gov
Legislative Assistant: Shelby Baumgartner
Phone: 317-233-5248
Email: shelby.baumgartner@iga.in.gov

Representative Carolyn Jackson, Democrat
Phone: 800-382-9842
Email: h1@iga.in.gov
Legislative Assistant: Peter Okefor
Phone: 317-232-9875
Email: peter.okeafor@iga.in.gov

PROPOSED AMENDMENT

SB 389 # 11

DIGEST

State regulated wetlands. Amends the law requiring a permit and compensatory mitigation for "wetland activity" (the discharge of dredged or fill material) in a state regulated isolated wetland by: (1) eliminating the permit and compensatory mitigation requirements for wetland activity in a Class I wetland; (2) changing the definition of "Class II wetland"; (3) providing that wetland activity may be conducted without a permit: (A) in a Class II wetland with an area of not more than one-half acre; (B) in a Class III wetland with an area of not more than one-quarter acre; (C) in an ephemeral stream; and (D) in a Class II wetland or Class III wetland that is located within the boundaries of a municipality and has an area of not more than one acre; (4) 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; (5) providing that wetland activities in a Class II wetland with an area of more than one-half acre shall be authorized by a general permit rather than an individual permit; (6) reducing the compensatory mitigation required for wetland activity in a Class II wetland or Class III wetland by changing the ratios determining how much wetland area must be restored or created in compensation for the wetland activity in the Class II wetland or Class III wetland; and (7) requiring the department of environmental management to make a decision to issue or deny an individual permit for wetland activity in a Class III wetland not later than 90 days (instead of 120 days) after receiving the completed application.

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

- 1 (16 U.S.C. 1531 et seq.) and the wetland is characterized by at
 2 least one (1) of the following:
- 3 (i) The wetland is typified by low species diversity.
 - 4 (ii) The wetland contains greater than fifty percent (50%)
 5 areal coverage of non-native invasive species of vegetation.
 - 6 (iii) The wetland does not support significant wildlife or
 7 aquatic habitat.
 - 8 (iv) The wetland does not possess significant hydrologic
 9 function;
- 10 (2) "Class II wetland" means ~~(A) an isolated wetland that is not a~~
 11 ~~Class I or Class III wetland; or (B) a type of wetland listed in~~
 12 ~~subdivision (3)(B) that would meet the definition of Class I~~
 13 ~~wetland if the wetland were not a rare or ecologically important~~
 14 ~~type; an isolated wetland that supports moderate habitat or~~
 15 ~~hydrological functions, including an isolated wetland that is~~
 16 ~~dominated by native species but is generally without:~~
 17 **(A) the presence of; or**
 18 **(B) habitat for;**
 19 **rare, threatened, or endangered species; and**
- 20 (3) "Class III wetland" means an isolated wetland:
 21 (A) that is located in a setting undisturbed or minimally
 22 disturbed by human activity or development and that supports
 23 more than minimal wildlife or aquatic habitat or hydrologic
 24 function; or
 25 (B) ~~unless classified as a Class II wetland under subdivision~~
 26 ~~(2)(B); that is of one (1) of the following rare and ecologically~~
 27 ~~important types:~~
 28 (i) Acid bog.
 29 (ii) Acid seep.
 30 (iii) Circumneutral bog.
 31 (iv) Circumneutral seep.
 32 (v) Cypress swamp.
 33 (vi) Dune and swale.
 34 (vii) Fen.
 35 (viii) Forested fen.
 36 (ix) Forested swamp.
 37 (x) Marl beach.
 38 (xi) Muck flat.
 39 (xii) Panne.
 40 (xiii) Sand flat.

- 1 (xiv) Sedge meadow.
- 2 (xv) Shrub swamp.
- 3 (xvi) Sinkhole pond.
- 4 (xvii) Sinkhole swamp.
- 5 (xviii) Wet floodplain forest.
- 6 (xix) Wet prairie.
- 7 (xx) Wet sand prairie.

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

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

- 16 (1) that is cultivated for agricultural purposes; and
- 17 (2) from which crops are harvested.
- 18 (b) The term includes:
- 19 (1) orchards;
- 20 (2) farmland used to produce row crops, close-grown crops,
- 21 or cultivated hay; and
- 22 (3) farmland intentionally kept out of production during a
- 23 regular growing season (summer fallow).

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

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

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

- 38 (1) is a voluntarily created wetland unless:
- 39 (A) the wetland is approved by the department for
- 40 compensatory mitigation purposes in accordance with a permit

- 1 issued under Section 404 of the Clean Water Act or
 2 IC 13-18-22;
- 3 (B) the wetland is reclassified as a state regulated wetland
 4 under IC 13-18-22-6(e); or
- 5 (C) the owner of the wetland declares, by a written instrument:
 6 (i) recorded in the office of the recorder of the county or
 7 counties in which the wetland is located; and
 8 (ii) filed with the department;
- 9 that the wetland is to be considered in all respects to be a state
 10 regulated wetland;
- 11 (2) exists as an incidental feature in or on:
 12 (A) a residential lawn;
 13 (B) a lawn or landscaped area of a commercial or
 14 governmental complex;
 15 (C) agricultural land;
 16 (D) a roadside ditch;
 17 (E) an irrigation ditch; or
 18 (F) a manmade drainage control structure;
- 19 (3) is a fringe wetland associated with a private pond;
- 20 (4) is, or is associated with, a manmade body of surface water of
 21 any size created by:
 22 (A) excavating;
 23 (B) diking; or
 24 (C) excavating and diking;
- 25 dry land to collect and retain water for or incidental to
 26 agricultural, commercial, industrial, or aesthetic purposes;
- 27 ~~(5) subject to subsection (c);~~ is:
 28 **(A) a Class I wetland;**
 29 **(B) subject to subsection (c), a Class I Class II wetland with**
 30 **an area, as delineated, of one-half (1/2) acre or less; or**
 31 ~~(6) subject to subsection (d);~~ **is (C) a Class II Class III**
 32 **wetland with an area, as delineated, of one-fourth (1/4) acre or**
 33 **less;**
- 34 ~~(7) (6)~~ is located on land:
 35 (A) subject to regulation under United States Department of
 36 Agriculture wetland conservation programs, including
 37 Swampbuster and the Wetlands Reserve Program, because of
 38 voluntary enrollment in a federal farm program; and
 39 (B) used for agricultural or other purposes allowed under the
 40 programs referred to in clause (A); or

- 1 ~~(8)~~ (7) is constructed for reduction or control of pollution.
- 2 (b) For purposes of subsection (a)(2), an isolated wetland exists as
- 3 an incidental feature:
- 4 (1) if:
- 5 (A) the owner or operator of the property or facility described
- 6 in subsection (a)(2) does not intend the isolated wetland to be
- 7 a wetland;
- 8 (B) the isolated wetland is not essential to the function or use
- 9 of the property or facility; and
- 10 (C) the isolated wetland arises spontaneously as a result of
- 11 damp soil conditions incidental to the function or use of the
- 12 property or facility; and
- 13 (2) if the isolated wetland satisfies any other factors or criteria
- 14 established in rules that are:
- 15 (A) adopted by the board; and
- 16 (B) not inconsistent with the factors and criteria described in
- 17 subdivision (1).
- 18 ~~(c)~~ (d) The total acreage of Class I wetlands on a tract to which the
- 19 exemption described in subsection ~~(a)(5)~~ may apply is limited to the
- 20 larger of:
- 21 (1) the acreage of the largest individual isolated wetland on the
- 22 tract that qualifies for the exemption described in subsection
- 23 ~~(a)(5)~~; and
- 24 (2) fifty percent (50%) of the cumulative acreage of all individual
- 25 isolated wetlands on the tract that would qualify for the exemption
- 26 described in subsection ~~(a)(5)~~ but for the limitation of this
- 27 subsection.
- 28 ~~(d)~~ (e) The total acreage of Class II wetlands on a tract to which the
- 29 exemption described in subsection ~~(a)(6)~~ ~~(a)(5)(B)~~ may apply is limited
- 30 to the larger of:
- 31 (1) the acreage of the largest individual isolated wetland on the
- 32 tract that qualifies for the exemption described in subsection
- 33 ~~(a)(6)~~; ~~(a)(5)(B)~~; and
- 34 (2) ~~thirty-three and one-third percent (33 1/3%)~~ **seventy-five**
- 35 **percent (75%)** of the cumulative acreage of all individual
- 36 isolated wetlands on the tract that would qualify for the exemption
- 37 described in subsection ~~(a)(6)~~ ~~(a)(5)(B)~~ but for the limitation of
- 38 this subsection.
- 39 ~~(e)~~ (d) An isolated wetland described in subsection ~~(a)(5)~~ ~~(a)(5)(B)~~
- 40 or ~~(a)(6)~~ ~~(a)(5)(C)~~ does not include an isolated wetland on a tract that

1 contains more than one (1) of the same class of wetland until the owner
 2 of the tract notifies the department that the owner has selected the
 3 isolated wetland to be an exempt isolated wetland under subsection
 4 ~~(a)(5)~~ **(a)(5)(B)** or ~~(a)(6)~~ **(a)(5)(C)**. ~~consistent with the applicable~~
 5 ~~limitations described in subsections (e) and (d).~~

6 SECTION 5. IC 13-11-2-104.8 IS ADDED TO THE INDIANA
 7 CODE AS A NEW SECTION TO READ AS FOLLOWS
 8 [EFFECTIVE JULY 1, 2021]: **Sec. 104.8. "In lieu fee", for purposes**
 9 **of 13-18-22-6, means a fee that:**

10 **(1) is paid pursuant to:**

11 **(A) the department of natural resources stream and**
 12 **wetland mitigation program; or**

13 **(B) another in lieu fee mitigation program;**

14 **(2) is paid to:**

15 **(A) the state government; or**

16 **(B) the Indiana natural resources foundation created by**
 17 **IC 14-12-1-4; and**

18 **(3) is applied toward the cost of:**

19 **(A) restoring, establishing, enhancing, or preserving**
 20 **aquatic resources in compensation for the alteration of**
 21 **other aquatic resources; and**

22 **(B) monitoring and providing long term management of**
 23 **the site where aquatic resources are restored, established,**
 24 **enhanced, or preserved with money provided by the fee.**

25 SECTION 6. IC 13-11-2-265.8 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 265.8. "Wetlands**
 27 **delineation" or "delineation", for purposes of section 74.5 of this**
 28 **chapter and IC 13-18-22, means a technical assessment:**

29 **(1) of whether a wetland exists on an area of land; and**

30 **(2) if so, of the type and quality of the wetland based on the**
 31 **presence or absence of wetlands characteristics, as determined**
 32 **consistently with the Wetlands Delineation Manual, Technical**
 33 **Report Y-87-1 of the United States Army Corps of Engineers.**

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

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

40 **(1) The discharge of dirt, sand, rock, stone, concrete, or other**

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

- 1 **defined in IC 13-11-2-74.5.**
- 2 **(6) Dredge and fill activities in an ephemeral stream, as**
- 3 **defined in IC 13-11-2-72.4.**
- 4 **(7) Dredge and fill activities in a Class II or Class III wetland**
- 5 **that:**
- 6 **(A) is located within the boundaries of a municipality; and**
- 7 **(B) has an area, as delineated, of not more than one (1)**
- 8 **acre.**
- 9 **(e) The goal of the permitting program for wetland activities in state**
- 10 **regulated wetlands is to:**
- 11 **(1) promote a net gain in high quality isolated wetlands; and**
- 12 **(2) assure that compensatory mitigation will offset the loss of**
- 13 **isolated wetlands allowed by the permitting program.**
- 14 **(c) The development of cropland, as defined in IC 13-11-2-48.5,**
- 15 **does not require a permit under this chapter if the cropland has**
- 16 **been used for agricultural purposes:**
- 17 **(1) in the five (5) years immediately preceding the**
- 18 **development; or**
- 19 **(2) in the ten (10) years immediately preceding the**
- 20 **development, if the United States Army Corps of Engineers**
- 21 **has issued a jurisdictional determination confirming that the**
- 22 **cropland does not contain wetlands subject to federal**
- 23 **jurisdiction under Section 404 of the Clean Water Act.**
- 24 **After receiving a jurisdictional determination described in**
- 25 **subdivision (2) from the United States Army Corps of Engineers,**
- 26 **the department shall notify the person proposing the wetland**
- 27 **activity that the development of the cropland used for agricultural**
- 28 **purposes in the immediately preceding ten (10) years is exempt**
- 29 **from the permit requirement of subsection (a) under subdivision**
- 30 **(2).**
- 31 **SECTION 8. IC 13-18-22-3 IS AMENDED TO READ AS**
- 32 **FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 3. (a) An individual**
- 33 **permit is required to authorize a wetland activity in a Class III wetland**
- 34 **with an area, as delineated, of more than one-quarter (1/4) acre.**
- 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 H 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**

1 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 4. (a) ~~Wetland~~
 2 ~~activities with minimal impact in Class I wetlands and Class II~~
 3 ~~wetlands, including the activities analogous to those allowed under the~~
 4 ~~nationwide permit program (as published in 67 Fed. Reg. 2077-2089~~
 5 ~~(2002)); shall be authorized by a general permit rule.~~

6 (b) (a) Wetland activities in Class I wetlands a Class II wetland
 7 with an area, as delineated, of more than one-half (1/2) acre shall
 8 be authorized by a general permit rule.

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

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

17 Wetland	17 Replacement	17 On-site	17 Off-site
18 Class	18 Class	18 Ratio	18 Ratio
19 Class I	19 Class II or III	19 1 to 1	19 1 to 1
20 Class I	20 Class I	20 1.5 to 1	20 1.5 to 1
21 Class II	21 Class II or III	21 1.5 1 to 1	21 2 1 to 1
		22 Nonforested	22 Nonforested
		23 2 1.5 to 1	23 2.5 1.5 to 1
		24 Forested	24 Forested
25 Class III	25 Class III	25 2 to 1	25 2.5 to 1
		26 Nonforested	26 Nonforested
		27 2.5 2 to 1	27 3 2 to 1
		28 Forested	28 Forested

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

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

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

40 (1) within:

- 1 (A) the same eight (8) digit U.S. Geological Service hydrologic
 2 unit code; or
 3 (B) the same county;
 4 as the isolated wetlands subject to the authorized wetland activity;
 5 or
 6 (2) within a designated service area established in an in lieu fee
 7 mitigation program approved by the United States Army Corps of
 8 Engineers.

9 (e) Exempt isolated wetlands may be used to provide compensatory
 10 mitigation for wetlands activities in state regulated wetlands. An
 11 exempt isolated wetland that is used to provide compensatory
 12 mitigation becomes a state regulated wetland.

13 SECTION 11. IC 13-18-22-7 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 7. (a) The department
 15 shall:

- 16 (1) administer the permit programs established by this chapter;
 17 and
 18 (2) review and issue decisions on applications for permits to
 19 undertake wetland activities in state regulated wetlands in
 20 accordance with the rules issued by the board under this chapter.

21 (b) Before the adoption of rules by the board under this chapter, the
 22 department shall ~~(1)~~ issue individual permits under this chapter
 23 consistent with the general purpose of this chapter. ~~and~~

24 ~~(2) for wetland activities in Class I wetlands, issue permits under~~
 25 ~~this subsection:~~

- 26 ~~(A) that are simple, streamlined, and uniform;~~
 27 ~~(B) that do not require development of site specific provisions;~~
 28 ~~and~~
 29 ~~(C) promptly upon submission by the applicant to the~~
 30 ~~department of a notice of registration for a permit.~~

31 ~~(c) Not later than June 1, 2004, The department shall make available~~
 32 ~~to the public (1) a form for use in applying for a permit under~~
 33 ~~subsection (b)(1); (b). and (2) a form for use in submitting a notice of~~
 34 ~~registration for a permit to undertake a wetland activity in a Class I~~
 35 ~~wetland under subsection (b)(2).~~

36 SECTION 12. IC 13-18-22-8 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 8. (a) Subject to
 38 subsection (f), the department shall make a decision to issue or deny an
 39 individual permit under section 3 or ~~7(b)(1)~~ **7(b)** of this chapter not
 40 later than ~~one hundred twenty (120)~~ **ninety (90)** days after receipt of

1 the completed application. If the department fails to make a decision on
 2 a permit application by the deadline under this subsection or subsection
 3 ~~(f)~~, **(d)**, a permit is considered to have been issued by the department
 4 in accordance with the application.

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

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

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

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

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

33 (1) ~~one hundred twenty (120)~~ **ninety (90)** days; minus

34 (2) the number of days the department held the initial application
 35 before giving a notice of deficiency under this subsection.

36 SECTION 13. IC 13-18-22-11 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 11. When land referred
 38 to in ~~IC 13-11-2-74.5(a)(7)~~ **IC 13-11-2-74.5(a)(6)** is no longer subject
 39 to United States Department of Agriculture wetland conservation rules:

40 (1) isolated wetlands located on the land are subject to this

1 chapter; and
2 (2) any past wetland activities in the isolated wetlands located on
3 the land become subject to this chapter, unless the wetland
4 activities were in compliance with United States Department of
5 Agriculture wetland conservation rules.

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