

PROPOSED AMENDMENT

SB 389 # 24

DIGEST

Wetlands. Amends the law requiring a permit and compensatory mitigation for "wetland activity" (the discharge of dredged or fill material) in a state regulated wetland: (1) by changing the definition of "Class II wetland"; (2) by adding a wetland that meets the definition of "wetlands" only because of the presence of an ephemeral stream to the definition of "exempt isolated wetlands" that are exempt from the permit and mitigation requirements; (3) by providing that a permit is not needed for the development of cropland that has been used for agricultural purposes: (A) in the five years immediately preceding the development; or (B) in the 10 years immediately preceding the development if the United States Army Corps of Engineers has issued a jurisdictional determination confirming that the cropland does not contain wetlands subject to federal jurisdiction; (4) by providing that wetland activity in a Class II wetland with an area of more than one-fourth acre but not more than three-eighths acre shall be authorized by a general permit rather than an individual permit; (5) by providing that: (A) no permit is needed for maintenance of a field tile in Class I wetland; (B) maintenance of a field tile in Class II wetland may be conducted with a general permit if certain conditions are met; and (C) maintenance of a field tile in a Class III wetland may be conducted with a general permit if certain conditions are met and the applicant obtains a site-specific approval; (6) by establishing conditions for obtaining a site-specific approval; (7) by changing the mitigation ratios for wetland activity: (A) to "1 to 1" for all Class I wetlands; (B) to "1.5 to 1" for all nonforested Class II wetlands; and (C) to "2 to 1" for all forested Class II wetlands; and (8) by requiring the department of environmental management (department) to make a decision to issue or deny an individual permit for wetland activity not later than 90 days (instead of 120 days) after receiving the completed application. Amends the law concerning a certification under Section 401 of the Clean Water Act for dredge and fill activity in a federally regulated wetland to require the department to make a final determination not later than 90 days (instead of 120 days) after receiving a completed application if the applicant requests a pre-coordination meeting. Urges the legislative council to assign an appropriate interim study committee to study the maintenance and management of wetlands in Indiana.

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- 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.

1 (B) The wetland supports only minimal wildlife or aquatic
 2 habitat or hydrologic function because the wetland does not
 3 provide critical habitat for threatened or endangered species
 4 listed in accordance with the Endangered Species Act of 1973
 5 (16 U.S.C. 1531 et seq.) and the wetland is characterized by at
 6 least one (1) of the following:

- 7 (i) The wetland is typified by low species diversity.
 8 (ii) The wetland contains greater than fifty percent (50%)
 9 areal coverage of non-native invasive species of vegetation.
 10 (iii) The wetland does not support significant wildlife or
 11 aquatic habitat.
 12 (iv) The wetland does not possess significant hydrologic
 13 function;

14 (2) "Class II wetland" means ~~(A) an isolated wetland that is not a~~
 15 ~~Class I or Class III wetland; or (B) a type of wetland listed in~~
 16 ~~subdivision (3)(B) that would meet the definition of Class I~~
 17 ~~wetland if the wetland were not a rare or ecologically important~~
 18 ~~type; an isolated wetland that supports moderate habitat or~~
 19 ~~hydrological functions, including an isolated wetland that is~~
 20 ~~dominated by native species but is generally without:~~

- 21 **(A) the presence of; or**
 22 **(B) habitat for;**
 23 **rare, threatened, or endangered species; and**

24 (3) "Class III wetland" means an isolated wetland:
 25 (A) that is located in a setting undisturbed or minimally
 26 disturbed by human activity or development and that supports
 27 more than minimal wildlife or aquatic habitat or hydrologic
 28 function; or
 29 (B) ~~unless classified as a Class II wetland under subdivision~~
 30 ~~(2)(B); that is of one (1) of the following rare and ecologically~~
 31 ~~important types:~~
 32 (i) Acid bog.
 33 (ii) Acid seep.
 34 (iii) Circumneutral bog.
 35 (iv) Circumneutral seep.
 36 (v) Cypress swamp.
 37 (vi) Dune and swale.
 38 (vii) Fen.
 39 (viii) Forested fen.
 40 (ix) Forested swamp.

- 1 (x) Marl beach.
- 2 (xi) Muck flat.
- 3 (xii) Panne.
- 4 (xiii) Sand flat.
- 5 (xiv) Sedge meadow.
- 6 (xv) Shrub swamp.
- 7 (xvi) Sinkhole pond.
- 8 (xvii) Sinkhole swamp.
- 9 (xviii) Wet floodplain forest.
- 10 (xix) Wet prairie.
- 11 (xx) Wet sand prairie.

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

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

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

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

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

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

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

1 programs referred to in clause (A); ~~or~~
 2 (8) is constructed for reduction or control of pollution; **or**
 3 **(9) meets the definition of wetlands in section 265.7 of this**
 4 **chapter only because of the presence of an ephemeral stream.**

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

7 (1) if:

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

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

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

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

18 (A) adopted by the board; and

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

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

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

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

31 (d) The total acreage of Class II wetlands on a tract to which the
 32 exemption described in subsection (a)(6) may apply is limited to the
 33 larger of:

34 (1) the acreage of the largest individual isolated wetland on the
 35 tract that qualifies for the exemption described in subsection
 36 (a)(6); and

37 (2) thirty-three and one-third percent (33 1/3%) of the cumulative
 38 acreage of all individual isolated wetlands on the tract that would
 39 qualify for the exemption described in subsection (a)(6) but for
 40 the limitation of this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

30 **(1) "wetlands delineation" or "delineation" means a technical
 31 assessment:**

32 ~~(1)~~ **(A) of whether a wetland exists on an area of land; and**

33 ~~(2)~~ **(B) if so, of the type and quality of the wetland based on
 34 the presence or absence of wetlands characteristics, as
 35 determined consistently with the Wetlands Delineation
 36 Manual, Technical Report Y-87-1 of the United States Army
 37 Corps of Engineers; and**

38 **(2) "delineated" describes property that has undergone
 39 wetlands delineation.**

40 SECTION 7. IC 13-18-22-1, AS AMENDED BY P.L.166-2020,

1 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2021]: Sec. 1. (a) Except as provided in subsection (b), a
3 person proposing a wetland activity in a state regulated wetland must
4 obtain a permit under this chapter to authorize the wetland activity.

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

6 (1) The discharge of dirt, sand, rock, stone, concrete, or other
7 inert fill materials in a de minimis amount.

8 (2) A wetland activity at a surface coal mine for which the
9 department of natural resources has approved a plan to:

10 (A) minimize, to the extent practical using best technology
11 currently available, disturbances and adverse effects on fish
12 and wildlife;

13 (B) otherwise effectuate environmental values; and

14 (C) enhance those values where practicable.

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

17 (A) normal farming, silviculture, and ranching activities, such
18 as plowing, seeding, cultivating, minor drainage, harvesting
19 for the production of food, fiber, and forest products, or upland
20 soil and water conservation practices;

21 (B) maintenance, including emergency reconstruction of
22 recently damaged parts, of currently serviceable structures
23 such as dikes, dams, levees, groins, riprap, breakwaters,
24 causeways, and bridge abutments or approaches, and
25 transportation structures;

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

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

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

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

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

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

40 (4) The maintenance or reconstruction (as defined in

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

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

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

- 10 (1) promote a net gain in high quality isolated wetlands; and
 11 (2) assure that compensatory mitigation will offset the loss of
 12 isolated wetlands allowed by the permitting program.

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

- 16 **(1) in the five (5) years immediately preceding the**
 17 **development; or**
 18 **(2) in the ten (10) years immediately preceding the**
 19 **development, if the United States Army Corps of Engineers**
 20 **has issued a jurisdictional determination confirming that the**
 21 **cropland does not contain wetlands subject to federal**
 22 **jurisdiction under Section 404 of the Clean Water Act.**

23 **After receiving a jurisdictional determination described in**
 24 **subdivision (2) from the United States Army Corps of Engineers,**
 25 **the department shall notify the person proposing the wetland**
 26 **activity that the development of the cropland used for agricultural**
 27 **purposes in the immediately preceding ten (10) years is exempt**
 28 **from the permit requirement of subsection (a) under subdivision**
 29 **(2).**

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

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

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

39 SECTION 9. IC 13-18-22-4 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 4. (a) ~~Wetland~~

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

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

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

12 (3) The maintenance of a field tile within Class II wetland.
13 However, the maintenance described in this subdivision may
14 be authorized only if the field tile:

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

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

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

21 (A) the maintenance of the field tile:

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

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

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

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

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

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

38 Wetland	Replacement	On-site and	Off-site
39 Class	Class	In-lieu Fee	Ratio
40		Ratio	

1	Class I	Class II or III	1 to 1	1 to 1
2	Class I	Class I	1.5 1 to 1	1.5 1 to 1
3	Class II	Class II or III	1.5 to 1	2 1.5 to 1
4			Nonforested	Nonforested
5			2 to 1	2.5 2 to 1
6			Forested	Forested
7	Class III	Class III	2 to 1	2.5 to 1
8			Nonforested	Nonforested
9			2.5 to 1	3 to 1
10			Forested	Forested

11 (b) The compensatory mitigation ratio shall be lowered to one to one
 12 (1:1) if the compensatory mitigation is completed before the initiation
 13 of the wetland activity.

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

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

31 (e) Exempt isolated wetlands may be used to provide compensatory
 32 mitigation for wetlands activities in state regulated wetlands. An
 33 exempt isolated wetland that is used to provide compensatory
 34 mitigation becomes a state regulated wetland.

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

- 38 (1) administer the permit programs established by this chapter;
- 39 and
- 40 (2) review and issue decisions on applications for permits to

1 undertake wetland activities in state regulated wetlands in
2 accordance with the rules issued by the board under this chapter.

3 (b) Before the adoption of rules by the board under this chapter, the
4 department shall:

5 (1) issue individual permits under this chapter consistent with the
6 general purpose of this chapter; and

7 (2) for wetland activities in Class I wetlands, issue permits under
8 this subsection:

9 (A) that are simple, streamlined, and uniform;

10 (B) that do not require development of site specific provisions;
11 and

12 (C) promptly upon submission by the applicant to the
13 department of a notice of registration for a permit.

14 (e) (b) Not later than June 1, 2004, The department shall make
15 available to the public (1) a form for use in applying for a permit under
16 subsection (b)(1); and (2) a form for use in submitting a notice of
17 registration for a permit to undertake a wetland activity in a Class I
18 wetland under subsection (b)(2). **this chapter.**

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

28 (b) A general permit under section 4 of this chapter becomes
29 effective with respect to a proposed wetland activity that is within the
30 scope of the general permit on the thirty-first day after the department
31 receives a notice of intent from the person proposing the wetland
32 activity that the wetland activity be authorized under the general
33 permit.

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

40 (d) The department may deny a registration for a permit for cause

1 under subsection (e) before the period specified in subsection (e)
2 expires:

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

5 ~~(f)~~ (d) The department may notify the applicant that the completed
6 application referred to in subsection (a) is deficient. If the department
7 fails to give notice to the applicant under this subsection not later than
8 fifteen (15) days after the department's receipt of the completed
9 application, the application is considered not to have been deficient.
10 After receipt of a notice under this subsection, the applicant may
11 submit an amended application that corrects the deficiency. The
12 department shall make a decision to issue or deny an individual permit
13 under the amended application within a period that ends a number of
14 days after the date the department receives the amended application
15 equal to the remainder of:

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

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

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

- 30 **(1) Information showing the location and area needed to be**
31 **disturbed within the Class III wetland.**
32 **(2) Lack of reasonable alternatives to the disturbance of the**
33 **area referred to in subdivision (1).**

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

- 37 (1) Make a final determination on an application for a
38 certification under Section 401 of the Clean Water Act not later
39 than ~~one hundred twenty (120)~~ **ninety (90)** days after its receipt
40 of a complete application **and if the applicant meets the**

1 **condition set forth in subsection (b).**
2 (2) Include in its notice of the final determination to the applicant
3 a statement of reasons for the final determination.
4 **(b) At least thirty (30) days before submitting an application**
5 **under this section, an applicant must contact the department to**
6 **request a pre-coordination meeting.**
7 ~~(b)~~ (c) A failure by the department to act within the period specified
8 in make a final determination not later than ninety (90) days after
9 receiving a complete application, if required under subsection
10 (a)(1), constitutes a waiver of the certification.
11 SECTION 15. [EFFECTIVE UPON PASSAGE] **(a) The legislative**
12 **council is urged to assign to an appropriate interim study**
13 **committee the task of studying the maintenance and management**
14 **of wetlands in Indiana.**
15 **(b) An interim study committee assigned a study under this**
16 **SECTION shall consider the effect of the maintenance and**
17 **management of wetlands on:**
18 **(1) construction costs;**
19 **(2) flood prevention;**
20 **(3) water pollution from runoff; and**
21 **(4) groundwater resources.**
22 **(c) This SECTION expires January 1, 2022.**
23 SECTION 16. **An emergency is declared for this act.**
 (Reference is to SB 389 as printed January 27, 2021.)