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SENATE BILL No. 414

Proposed Changes to January 31, 2023 printing by AM041402

DIGEST OF PROPOSED AMENDMENT

Wetlands. Makes various changes to the wetlands definition.

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 13-11-2-7.2 IS ADDED TO THE INDIANA
- 2 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 3 [EFFECTIVE JULY 1, 2023]: **Sec. 7.2. "Alternative residential**
- 4 **onsite sewage system", for purposes of IC 13-18-28, has the**
- 5 **meaning set forth in IC 13-18-28-1.**
- 6 [SECTION 2. IC 13-11-2-25.8, AS AMENDED BY P.L.160-2021,
- 7 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 8 JULY 1, 2023]: Sec. 25.8. (a) For purposes of IC 13-18:
- 9 (1) "Class I wetland" means an isolated wetland described by
- 10 one (1) or both of the following:
- 11 (A) At least fifty percent (50%) of the wetland has been
- 12 disturbed or affected by human activity or development by
- 13 one (1) or more of the following:
- 14 (i) Removal or replacement of the natural vegetation.
- 15 (ii) Modification of the natural hydrology.
- 16 (B) The wetland supports only minimal wildlife, or aquatic
- 17 habitat, or and hydrologic function because the wetland
- 18 does not provide critical habitat for threatened or
- 19 endangered species listed in accordance with the
- 20 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)
- 21 and the wetland is characterized by at least one (1) of the
- 22 following:
- 23 (i) The wetland is typified by low species diversity.

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(ii) The wetland contains greater than fifty percent (50%) areal coverage of non-native invasive species of vegetation.

(iii) The wetland does not support significant wildlife or aquatic habitat.

(iv) The wetland does not possess significant hydrologic function;

(2) "Class II wetland" means an isolated wetland that supports moderate habitat ~~or~~ **and** hydrological functions, including an isolated wetland that is dominated by native species but is generally without:

(A) the presence of; or

(B) habitat for;

rare, threatened, or endangered species; and

(3) "Class III wetland" means an isolated wetland:

(A) that is located in a setting undisturbed or minimally disturbed by human activity or development and that supports more than minimal wildlife or aquatic habitat or hydrologic function; ~~or~~ **and**

(B) that is of one (1) of the following rare and ecologically important types:

(i) Acid bog.

(ii) Acid seep.

(iii) Circumneutral bog.

(iv) Circumneutral seep.

(v) Cypress swamp.

(vi) Dune and swale.

(vii) Fen.

(viii) Forested fen.

(ix) Forested swamp.

(x) Marl beach.

(xi) Muck flat.

(xii) Panne.

(xiii) Sand flat.

(xiv) Sedge meadow.

(xv) Shrub swamp.

(xvi) Sinkhole pond.

(xvii) Sinkhole swamp.

(xviii) Wet floodplain forest.

(xix) Wet prairie.

(xx) Wet sand prairie.

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

] SECTION ~~2~~[3]. IC 13-11-2-218.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 218.3. "Standard septic system", for purposes of IC 13-18-28, has the meaning set forth in**

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1 **IC 13-18-28-2.**

2 SECTION ~~↔~~[4]. IC 13-18-12-3, AS AMENDED BY
3 P.L.159-2011, SECTION 26, IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 3. (a) The board shall
5 initiate, in accordance with IC 13-15, a septage management permit
6 program for all persons who offer to perform or are performing septage
7 management services.

8 (b) A permit from the department may not be required for the
9 ownership or operation of one (1) or more holding tanks described
10 in IC 16-41-25-9 in which septage originating from a residential or
11 commercial source is held until it is removed and transported from
12 the site of the holding tanks by septage management vehicles.
13 However:

14 (1) the board may adopt rules under IC 4-22-2 and
15 IC 13-14-9; or

16 (2) the department may establish guidelines;
17 concerning the reports to be provided to the department by local
18 health departments under IC 16-41-25-9(h). The rules or guidelines
19 may specify the content to be included in the reports and the
20 frequency at which the reports must be provided.

21 SECTION ~~↔~~[5]. IC 13-18-28 IS ADDED TO THE INDIANA
22 CODE AS A NEW CHAPTER TO READ AS FOLLOWS
23 [EFFECTIVE UPON PASSAGE]:

24 **Chapter 28. Alternative Residential Onsite Sewage Systems**

25 **Sec. 1. As used in this chapter, "alternative residential onsite
26 sewage system" means a system that:**

27 (1) is designed for the collection, storage, treatment, and
28 disposal of sewage from the dwelling of one (1) or two (2)
29 families;

30 (2) is installed in a place that, because of soil type, space
31 restrictions, or another reason, is not suitable for a standard
32 septic system;

33 (3) is a replacement for a standard septic system that was in
34 place in the same site but did not function properly;

35 (4) is based on a design or plan approved by the National
36 Sanitation Foundation;

37 (5) employs advanced treatment components not used in
38 standard septic systems, including a disinfection component
39 that uses chlorine, ultraviolet light, or ozone to reduce the
40 concentration of the pathogenic constituents of the effluent
41 to an acceptable level before it is discharged;

42 (6) discharges the treated effluent above ground; and

43 (7) because of its design and components, requires more
44 frequent testing and maintenance than a standard septic
45 system.

46 **Sec. 2. As used in this chapter, "standard septic system" means
47 a system that:**

48 (1) is designed for the treatment and disposal of wastewater
49 from a residence; and

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(2) consists of:

- (A) a septic tank in which organic matter is digested;**
- and**
- (B) a drainfield in which the effluent is slowly released into the soil.**

Sec. 3. (a) The environmental rules board shall, under IC 4-22-2 and IC 13-14-9, adopt rules, including emergency rules adopted in the manner provided by IC 4-22-2-37.1, concerning alternative residential onsite sewage systems. Notwithstanding IC 4-22-2-37.1(g), the emergency rules that are adopted under this subsection and in the manner provided by IC 4-22-2-37.1 expire on the date on which rules that supersede the emergency rules are adopted by the board under this subsection and IC 4-22-2-24 through IC 4-22-2-36.

(b) The rules adopted under this section must establish:

- (1) standards and specifications for alternative residential onsite sewage systems;**
- (2) effluent limitations for alternative residential onsite sewage systems that are necessary to ensure that the effluent discharged from those systems does not pose an unreasonable risk to human health or the environment;**
- (3) minimum qualifications for individuals or entities that install and maintain alternative residential onsite sewage systems, including the requirement that the individuals receive training provided or approved by a manufacturer of alternative residential onsite sewage systems or of components used in alternative residential onsite sewage systems; and**
- (4) requirements for the inspection, maintenance, testing, service, and repair of alternative residential onsite sewage systems, including:**
 - (A) the establishment or adoption of mandatory inspection and maintenance procedures;**
 - (B) requirements as to when and how often the mandatory inspection and maintenance procedures must be performed;**
 - (C) a requirement that effluent discharged from an alternative residential onsite sewage system be:**
 - (i) sampled at least once every three (3) months; and**
 - (ii) tested in a laboratory approved by the department under the rules to ensure that the effluent complies with the effluent limitations established under subdivision (2); and**
 - (D) a requirement that the service or repair of an alternative residential onsite sewage system, if needed, be performed by an individual or entity meeting the qualifications established by the board in the rules.**

Sec. 4. Not more than sixty (60) days after the rules adopted under section 3 of this chapter take effect, the commissioner or the

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1 department shall issue a National Pollution Discharge Elimination
 2 System general permit in accordance with 40 CFR 122.26 that
 3 authorizes the installation and use of alternative residential onsite
 4 sewage systems.

5 SECTION ~~6~~[6]. IC 16-20-10 IS ADDED TO THE INDIANA
 6 CODE AS A NEW CHAPTER TO READ AS FOLLOWS
 7 [EFFECTIVE JULY 1, 2023]:

8 **Chapter 10. Alternative Residential Onsite Sewage Systems**

9 **Sec. 1.** As used in this chapter, "alternative residential onsite
 10 sewage system" has the meaning set forth in IC 13-18-28-1.

11 **Sec. 2. (a) If:**

12 (1) an application is submitted to a local health department
 13 for a permit for a residential onsite sewage system;

14 (2) the plans for the residential onsite sewage system:

15 (A) provide for the system to be an alternative
 16 residential onsite sewage system; and

17 (B) meet the standards and specifications for alternative
 18 residential onsite sewage systems established in the rules
 19 adopted under IC 13-18-28-3;

20 (3) the applicant affirms in writing that:

21 (A) the alternative residential onsite sewage system will
 22 be installed by an individual or entity that meets the
 23 minimum qualifications for alternative residential onsite
 24 sewage system installers that are established in the rules
 25 adopted under IC 13-18-28-3;

26 (B) the alternative residential onsite sewage system will
 27 be maintained:

28 (i) by individuals or entities that meet the minimum
 29 qualifications for performers of maintenance on
 30 alternative residential onsite sewage systems that
 31 are established in the rules adopted under
 32 IC 13-18-28-3; and

33 (ii) in accordance with the periodic maintenance
 34 schedule and other requirements established by the
 35 rules adopted under IC 13-18-28-3; and

36 (C) effluent discharged from the alternative residential
 37 onsite sewage system will be:

38 (i) sampled at least once every three (3) months;
 39 and

40 (ii) tested in a laboratory approved by the
 41 department of environmental management;

42 according to the rules adopted under IC 13-18-28-3;

43 (4) the installation and operation of the alternative
 44 residential onsite sewage system are covered under the
 45 general permit for the installation and use of alternative
 46 residential onsite sewage systems that is issued under
 47 IC 13-18-28-4; and

48 (5) the permit applicant has filed an affidavit concerning the
 49 alternative residential onsite sewage system for recording in

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1 the county recorder's office of the county as required by
2 section 3 of this chapter;
3 the local health department shall grant the permit.

4 Sec. 3. (a) A person applying to a local health department for
5 a permit for an alternative residential onsite sewage system must
6 file an affidavit for recording in the county recorder's office of the
7 county.

8 (b) The affidavit filed under this section must:

9 (1) be filed in the deed records of the county;

10 (2) state that an application for an alternative residential
11 onsite sewage system has been submitted to the local health
12 department;

13 (3) state that the alternative residential onsite sewage system,
14 if constructed or installed in the property to which the
15 affidavit relates, will be subject to continuing inspection,
16 maintenance, and testing requirements under the rules of the
17 environmental rules board as long as the residential onsite
18 sewage system is in use, regardless of any transfer of
19 ownership of the property;

20 (4) clearly provide notice to any prospective transferee of the
21 property to which the affidavit relates that the prospective
22 transferee will be subject to the requirements described in
23 subdivision (3) after the transfer of the property to the
24 prospective transferee; and

25 (5) state that the failure of a property owner to satisfy the
26 continuing inspection, maintenance, and testing
27 requirements or to remedy a problem with the alternative
28 residential onsite sewage system may lead to, or may already
29 have been the cause of, the imposition of a lien against the
30 property.

31 (c) The owner of the property to which an affidavit recorded
32 under this section relates may have the affidavit removed from the
33 deed records of the county if:

34 (1) the alternative residential onsite sewage system:

35 (A) is not constructed or installed in the property to
36 which the affidavit relates; or

37 (B) is constructed or installed but:

38 (i) the alternative residential onsite sewage system
39 is removed from the property; or

40 (ii) use of the alternative residential onsite sewage
41 system is permanently ended; and

42 (2) any lien imposed against the property under section 5 of
43 this chapter is released and discharged.

44 (d) The county recorder may charge a reasonable fee for:

45 (1) the recording of an affidavit; and

46 (2) the removal of an affidavit from the deed records of the
47 county;

48 under this section.

49 Sec. 4. A permit issued by a local health department for an
50 alternative residential onsite sewage system is subject to the

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1 following conditions:

2 (1) The alternative residential onsite sewage system must be
3 constructed in compliance with the rules adopted by the
4 environmental management board under IC 13-18-28-3.

5 (2) The alternative residential onsite sewage system must be
6 operated and maintained in compliance with the rules
7 adopted by the environmental management board under
8 IC 13-18-28-3, including the requirements of the rules
9 concerning:

10 (A) mandatory inspection and maintenance; and

11 (B) the sampling and testing of effluent discharged from
12 an alternative residential onsite sewage system at least
13 once every three (3) months.

14 (3) If an inspection of the alternative residential onsite
15 sewage system or the sampling and testing of effluent from
16 the alternative residential onsite sewage system discloses that
17 the alternative residential onsite sewage system is not in
18 compliance with the effluent limitations established by the
19 rules adopted by the environmental management board
20 under IC 13-18-28-3 or is otherwise in need of maintenance
21 or repair, the owner of the property in which the alternative
22 residential onsite sewage system is located shall promptly
23 have the alternative residential onsite sewage system
24 serviced or repaired by an individual or entity qualified to
25 perform the service or repair work under the rules adopted
26 by the environmental management board under
27 IC 13-18-28-3.

28 (4) If the property owner fails to satisfy any requirements
29 concerning the mandatory inspection and maintenance of the
30 alternative residential onsite sewage system, the sampling
31 and testing of effluent from the alternative residential onsite
32 sewage system, or the servicing or repair of the alternative
33 residential onsite sewage system, the local health
34 department:

35 (A) shall have the alternative residential onsite sewage
36 system inspected, maintained, tested, serviced, or
37 repaired by an individual or entity qualified to perform
38 the inspection, maintenance, testing, service or repair
39 work under the rules adopted by the environmental
40 management board under IC 13-18-28-3; and

41 (B) shall bill the property owner for the cost of the
42 inspection, maintenance, testing, service, or repair work
43 plus a reasonable sum to defray the expenses of the local
44 health department in arranging for the service or repair
45 work.

46 Sec. 5. (a) A local health department shall enforce payment
47 under this section of costs accrued under section 4(4)(B) of this
48 chapter.

49 (b) As often as the local health department determines
50 necessary in a calendar year, the local health department shall

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1 prepare either of the following:

2 (1) A list of the costs accrued under section 4(4)(B) of this
3 chapter that includes:

4 (A) the name of the owner of each lot or parcel of real
5 property as to which costs are delinquent;

6 (B) a description of the lot or parcel of real property, as
7 shown in the records of the county auditor; and

8 (C) the amount of the delinquent costs.

9 (2) An individual instrument for each lot or parcel of real
10 property on which the costs accrued under section 4(4)(B) of
11 this chapter are delinquent.

12 (c) An officer of the local health department shall record a
13 copy of each list or each individual instrument with the county
14 recorder. The county recorder shall charge a fee for recording the
15 list or each individual instrument in accordance with the fee
16 schedule established in IC 36-2-7-10. The officer shall mail by
17 certified mail, or by another delivery service providing proof of
18 delivery, to each property owner on the list or on an individual
19 instrument a notice stating that a lien against the owner's property
20 has been recorded. A service charge of five dollars (\$5), which is in
21 addition to the recording fee charged under this subsection, shall
22 be added to each copy of each list or instrument that is recorded
23 under this subsection.

24 (d) Using the lists and instruments prepared under subsection
25 (b) and recorded under subsection (c), the local health department
26 shall, not later than ten (10) days after the list or each individual
27 instrument is recorded under subsection (c), certify to the county
28 auditor a list of the unpaid liens for collection with the next May
29 installment of property taxes. The county and its officers and
30 employees are not liable for any material error in the information
31 on this list.

32 (e) Upon receipt of the list under subsection (c), the county
33 auditor shall add a fifteen dollar (\$15) certification fee for each lot
34 or parcel of real property on which costs are delinquent. The fee is
35 in addition to all other fees and charges. The county auditor shall
36 immediately enter on the tax duplicate for the district the
37 delinquent costs, fees, and charges that are due not later than the
38 due date of the next May installment of property taxes. The county
39 treasurer shall include any unpaid costs, fees, and charges of each
40 lot or parcel of property at the time the next cycle's property tax
41 installment is billed.

42 (f) The local health department shall release any recorded lien
43 when the delinquent costs, fees, and charges have been fully paid.
44 The county recorder shall charge a fee for releasing the lien in
45 accordance with IC 36-2-7-10.

46 (g) After certification of liens under subsection (d), the local
47 health department may not collect or accept delinquent costs, fees,
48 and charges from property owners whose property has been
49 certified to the county auditor.

50 (h) If the delinquent costs, fees, and charges are not paid, they

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1 shall be collected by the county treasurer in the same way that
2 delinquent property taxes are collected.

3 (i) At the time of each semiannual tax settlement, the county
4 treasurer shall certify to the county auditor all costs, fees, and
5 charges that have been collected. The county auditor shall deduct
6 the service charges and certification fees collected by the county
7 treasurer and pay over to the officer the remaining amounts due
8 the local health department. The county treasurer shall retain the
9 service charges and certification fees that have been collected and
10 shall deposit them in the county general fund.

11 Sec. 6. IC 16-20-9-1 does not apply to this chapter.

12 SECTION ~~6~~ [7]. IC 16-41-25-9 IS ADDED TO THE INDIANA
13 CODE AS A NEW SECTION TO READ AS FOLLOWS
14 [EFFECTIVE JULY 1, 2023]: Sec. 9. (a) As used in this section,
15 "septage" means human excreta, wastewater, scum, sludge, and
16 other content introduced through incidental or accidental seepage
17 that is removed from domestic septic tanks, holding tanks, privies,
18 seepage pits, cesspools, compost toilets, or portable sanitary units.

19 (b) As used in this section, "septage management vehicle"
20 means a vehicle that is:

21 (1) used for:

22 (A) the removal of septage from holding tanks or sewage
23 disposal systems; and

24 (B) the transportation of the septage to wastewater
25 treatment plants or other facilities for treatment,
26 temporary storage, or disposal; and

27 (2) subject to regulation under IC 13-18-12 and 327 IAC 7.1.

28 (c) Septage that originates from a residential or commercial
29 source may be held in one (1) or more holding tanks until it is
30 removed and transported from the site of the holding tanks by a
31 septage management vehicle. A holding tank to which this
32 subsection applies may not have a capacity of more than ten
33 thousand (10,000) gallons.

34 (d) A holding tank used under this section must be:

35 (1) designed and equipped so that septage can be cleanly and
36 efficiently pumped from the tank into a septage management
37 vehicle to be transported from the site of the tank; and

38 (2) equipped with a device that will produce an audio and
39 visual alarm when the septage in the tank reaches two-thirds
40 (2/3) of the tank's capacity.

41 (e) A holding tank described in this section may not be used to
42 hold septage unless the tank owner has obtained a permit from the
43 local health department of the county, city, or multiple county unit
44 in which the holding tank is located. To obtain a permit, the owner
45 of a holding tank must:

46 (1) enter into a written contract with an operator of septage
47 management vehicles providing for the removal of septage
48 from the holding tank at regular intervals;

49 (2) provide a copy of the contract to the local health

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- 1 department; and
- 2 (3) commit to providing to the local health department copies
- 3 of receipts or other records proving that the holding tank
- 4 owner is regularly paying the septage management vehicle
- 5 operator a fee for the removal of septage from the holding
- 6 tank.
- 7 (f) A permit issued to the owner of a holding tank may be
- 8 suspended or revoked, or renewal of the permit may be denied, for:
- 9 (1) a violation of:
 - 10 (A) this section;
 - 11 (B) a condition stated in the permit; or
 - 12 (C) a requirement established under subsection (g); or
- 13 (2) a problem involving the holding tank or the operation of
- 14 the holding tank that creates a risk of harm to human health
- 15 or the environment.
- 16 (g) The local health department of a county, city, or multiple
- 17 county unit may establish requirements:
 - 18 (1) concerning the issuance, term, and renewal of permits
 - 19 required under subsection (e);
 - 20 (2) concerning the design, construction, location, and
 - 21 operation of holding tanks described in this section; and
 - 22 (3) determining:
 - 23 (A) the ways in which a holding tank owner may provide
 - 24 the proof; and
 - 25 (B) how often the tank owner must provide the proof;
 - 26 required under subsection (e)(3).
- 27 (h) In accordance with any rules or guidelines adopted under
- 28 IC 13-18-12-3(b), a local health department that issues permits for
- 29 the use of holding tanks under this section shall report to the
- 30 department of environmental management concerning the holding
- 31 tanks.
- 32 SECTION ~~8~~ [8]. An emergency is declared for this act.

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