



2021 Indiana General Assembly

Bills of INAFSM Interest

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

House Bill 1055: *Watershed Development Commissions*

House Bill 1162: *Fertilizer Runoff and Lake Michigan Discharges*

House Bill 1436: *Administrative Proceedings and State Agencies*

House Bill 1463: *Flood Control Measures*

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

House Committee Hearing:

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.

Once the bill has been sponsored in the House and assigned to a committee, I will reach out to see if the House sponsor(s) are amenable to revisions to the bill language.

House Bill 1055: Watershed Development Commissions

<http://iga.in.gov/legislative/2021/bills/house/1055>

Introduced by Representative Aylesworth Referred to House Committee on Natural Resources

Committee Hearing Date: Not yet scheduled

Committee Vote:

2nd Reading Date:

3rd Reading Date:

Senate Vote:

Senate Committee Hearing:

2nd Reading Date:

3rd Reading Date:

House Vote:

Synopsis: Watershed development commissions. Provides that the executives of one or more counties may adopt ordinances designating their counties as members of a proposed watershed development commission and that the watershed development commission is established as a legal entity with the counties as its members if it is recognized by the natural resources commission. Requires the natural resources commission, in deciding whether to recognize a proposed watershed development commission, to answer certain questions. Provides that a county may become a member of an established watershed development commission if its membership is accepted by the member counties and recognized by the natural resources commission. Sets forth certain flood control and drainage purposes for which a watershed development commission may be established. Requires a watershed development commission to develop a flood control and drainage plan for its designated watershed and grants a watershed development commission exclusive authority to perform drainage and flood control activities within the channel of the river that is the surface water outlet of the commission's designated watershed. Provides for a watershed development commission to be governed by a board. Provides for the funding of a watershed development commission through an annual special assessment against each taxable parcel of real property located: (1) in a member county; and (2) within the designated watershed of the watershed development commission. However, authorizes a member county to adopt any of three alternative methods of funding the watershed development commission. Authorizes a watershed development commission to give preference to an Indiana business over an out-of-state business in contracting for public works.

What it Means: As stated would allow, but does not require, counties to come together and form watershed development commissions, as has been done for the Little Calumet River, the Kankakee and Yellow Rivers, and the St. Joseph River (north central). Also allows assessment of property owners to fund management and projects within the watershed but requires development of a plan for management and projects.

INAFSM Position: No position taken yet. Bill progress will be monitored.

House Bill 1162: Fertilizer Runoff and Lake Michigan Discharges

<http://iga.in.gov/legislative/2021/bills/house/1162>

Introduced by Representative Dvorak

Referred to House Committee on Environmental
Affairs

Committee Hearing Date: Not yet scheduled

Committee Vote:

2nd Reading Date:

3rd Reading Date:

Senate Vote:

Senate Committee Hearing:

2nd Reading Date:

3rd Reading Date:

House Vote:

Synopsis: Fertilizer runoff and Lake Michigan discharges. Amends the water pollution control law effective July 1, 2023, to: (1) eliminate an exception to the prohibition against causing water pollution that applies to fertilizer runoff from a field in a storm event or irrigation return flow if the fertilizer was applied to the land in compliance with rules of the state chemist; (2) eliminate a provision requiring the commissioner of the department of environmental management (commissioner) to allow for a mixing zone in a permit that involves a discharge into Lake Michigan if the permit applicant can demonstrate that the mixing zone will not cause harm to human health or aquatic life; and (3) eliminate a provision under which the commissioner, in issuing a permit authorizing a discharge into a mixing zone in Lake Michigan, is required to allow for mixing initiated by the use of submerged, high rate diffuser outfall structures (or their equivalent) that provide turbulent initial mixing and minimize organism exposure times.

What it Means: The bill would appear to strengthen regulations on discharges and pollution into Lake Michigan.

INAFSM Position: No position taken yet. Bill progress will be monitored.

House Bill 1436: Administrative Proceedings and State Agencies

<http://iga.in.gov/legislative/2021/bills/house/1436>

Introduced by Representative Thompson Referred to House Committee on Judiciary

Committee Hearing Date: February 2, 2021 at 11:30 a.m. in the Indiana Government Center South

Committee Vote: No vote taken

2nd Reading Date:

3rd Reading Date:

Senate Vote:

Senate Committee Hearing:

2nd Reading Date:

3rd Reading Date:

House Vote:

Synopsis: Administrative proceedings and state agencies. Provides that, in an adjudicative administrative proceeding concerning an agency action, the administrative law judge shall order the agency to pay the reasonable attorney's fees incurred by the party challenging the agency action if the administrative law judge makes a finding that the agency action was: (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; or (5) not supported by substantial evidence. **Requires the director of the department of natural resources (director) to issue a permit for the construction of a structure in a floodway if the director determines that the structure will not: (1) adversely affect the efficiency of or unduly restrict the capacity of the floodway; (2) constitute an unreasonable hazard to the safety of life or property; or (3) result in unreasonably detrimental effects upon fish, wildlife, or botanical resources. Eliminates the provision of current law under which the director may not issue the permit unless the applicant clearly proves that the structure will not do any of those three things. Prohibits the director from determining that the construction of a structure in a floodway will adversely affect the efficiency of the floodway or unduly restrict the capacity of the floodway if the construction of the structure would increase the regulatory flood elevation of the floodway by less than fifteen-hundredths of a foot.**

What it Means: Currently an applicant for a Construction in a Floodway approval must demonstrate that the proposed project meets the approval criteria established by IDNR. This bill would revise this process so the IDNR Director decides if the project meets the criteria for approval. IDNR also testified at the committee hearing that the bill would no longer allow IDNR to require buildings be two feet above the Base Flood Elevation (BFE) or even above the BFE. Bill author will try to work out agreeable language with IDNR before next committee meeting.

INAFSM Position: No position taken yet. Bill progress will be monitored.

House Bill 1463: Flood Control Measures

<http://iga.in.gov/legislative/2021/bills/house/1463>

Introduced by Representative Lindauer

Referred to House Committee on Natural Resources

Committee Hearing Date: Not yet scheduled

Committee Vote:

2nd Reading Date:

3rd Reading Date:

Senate Vote:

Senate Committee Hearing:

2nd Reading Date:

3rd Reading Date:

House Vote:

Synopsis: Flood control measures. Provides that immediate action may be taken for the maintenance, alteration, repair, reconstruction, change in construction or location, or removal of a dike, floodwall, levee, or appurtenance to provide emergency protection to: (1) human life; or (2) property; if, in the opinion of the department of natural resources (DNR), there is not sufficient time for the maintenance, alteration, repair, reconstruction, change in construction or location, or removal to be effected through the issuance and enforcement of a notice of violation. (Under current law, danger to property alone is not sufficient cause for immediate action.) Provides that if, in the opinion of the DNR, immediate action is necessary, the DNR may: (1) undertake the action by itself or through a contractor engaged by the DNR; or (2) authorize the owner of the property on which the dike, floodwall, levee, or appurtenance is located to undertake the action. Provides that, before the natural resources commission or its agents may enter private property to investigate for flood control purposes, the owner or occupant of the property must be contacted and informed of the reason for the entry and the intended time and place of the entry by: (1) direct, in person verbal communication; (2) a telephone call; (3) certified mail with return receipt requested; or (4) first class mail or electronic mail followed by a response from the owner or occupant of the property; except when there is a need to enter the property immediately because of an emergency.

What it Means: The bill would allow IDNR to take immediate action, potentially without a landowner's approval, to perform emergency work on a flood control work.

INAFSM Position: No position taken yet. Bill progress will be monitored.