

SENATE BILL No. 432

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-18-2-3; IC 13-18-3-2.

Synopsis: Water body designation and water quality. Establishes procedures and criteria for the designation of a water body as an outstanding state resource water by the water pollution control board, and for the designation of a water body as an outstanding national resource water by the general assembly upon recommendation of the department of environmental management and the environmental quality service council. Establishes procedures and criteria for listing of impaired waters by the department of environmental management for compliance with federal law.

Effective: Upon passage; July 1, 2000.

Gard

January 10, 2000, read first time and referred to Committee on Environmental Affairs.

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Second Regular Session 111th General Assembly (2000)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1999 General Assembly.

SENATE BILL No. 432



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 13-18-2-3 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2000]: **Sec. 3. (a) The department shall prepare a list of impaired
4 waters for the purpose of complying with Section 303(d) of the
5 Clean Water Act (33 U.S.C. 1313(d)) at least once every five (5)
6 years. In determining whether a water body is impaired, the
7 department shall consider only reasonably current, credible,
8 representative, and scientifically defensible data. The list shall be
9 adopted by rule before its submission to the United States
10 Environmental Protection Agency.**

11 **(b) The board shall adopt by rule the methodology to be used in
12 identifying waters as impaired. The rule shall specify the
13 methodology and criteria for including and removing waters from
14 the list of impaired waters. The criteria for removing a water from
15 the list of impaired waters shall not be any more stringent than the
16 criteria for adding a water body to that list.**

17 **(c) The list of impaired waters developed by the department**



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1 shall contain a priority ranking of waters that are identified as
 2 impaired and for which total maximum daily loads will be
 3 required, as well as a schedule for the development of required
 4 total maximum daily loads. The schedule must be sufficient to
 5 ensure that all required total maximum daily loads will be
 6 developed within fifteen (15) years of the date the list is approved
 7 by the United States Environmental Protection Agency.

8 (d) The department shall make a reasonable and equitable
 9 allocation among sources when developing total maximum daily
 10 loads. At a minimum, the department shall consider:

- 11 (1) the environmental, economic, and technological feasibility
- 12 of achieving the allocation;
- 13 (2) the cost and benefit associated with achieving the
- 14 allocation; and
- 15 (3) any pollutant loading reductions reasonably expected to be
- 16 achieved as a result of other legally required actions or
- 17 voluntary measures.

18 (e) Once a total maximum daily load or an implementation plan
 19 is adopted for a water body, the department shall review the status
 20 of the water body at least once every five (5) years to determine
 21 whether compliance with applicable surface water quality
 22 standards has been achieved. If compliance with applicable surface
 23 water quality standards has not been achieved, the department
 24 shall evaluate whether modification of the total maximum daily
 25 load or implementation plan is required.

26 (f) Before July 1, 2005, the department shall submit a report to
 27 the governor, the speaker of the house of representatives, and the
 28 president pro tempore of the senate detailing progress made under
 29 this section. At a minimum, the report shall evaluate the
 30 effectiveness of the program and identify any recommended
 31 statutory changes to make the program more efficient, effective,
 32 and equitable.

33 SECTION 2. IC 13-18-3-2 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 2. (a) The board may
 35 adopt rules under IC 4-22-2 that are necessary to the implementation
 36 of:

- 37 (1) the Federal Water Pollution Control Act (33 U.S.C. 1251 et
- 38 seq.), as in effect January 1, 1988; and
- 39 (2) the federal Safe Drinking Water Act (42 U.S.C. 300f through
- 40 300j), as in effect January 1, 1988;
- 41 except as provided in IC 14-37.

42 (b) "Outstanding national resource water" means a water body



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- 1 that is:
- 2 (1) designated under subsection (k) to have its water quality
- 3 maintained and protected without degradation; and
- 4 (2) of high quality that constitutes an outstanding national
- 5 resource, such as waters of national and state parks and
- 6 wildlife refuges or waters of exceptional recreational or
- 7 ecological significance.
- 8 (c) "Outstanding state resource water" means a water body:
- 9 (1) that is designated under subsection (e) to have its water
- 10 quality improved; and
- 11 (2) that serves or could serve a unique and especially
- 12 important recreational, ecological, or aesthetic function.
- 13 (d) "Watershed" has the meaning set forth in IC 14-8-2-310.
- 14 (e) The board may designate a water body as an outstanding
- 15 state resource water by rule if the board determines the following:
- 16 (1) The water body has a unique ecological, recreational, or
- 17 aesthetic significance.
- 18 (2) The water body is not in an urban or developed watershed,
- 19 unless the board determines that the designation of the water
- 20 body as an outstanding state resource water will not adversely
- 21 affect future population, development, and economic growth
- 22 in the watershed.
- 23 (3) The designation of the water body as an outstanding state
- 24 resource water is necessary to protect the unique or special
- 25 nature of the water body.
- 26 (f) Before the board may adopt a rule designating a water body
- 27 as an outstanding state resource water, the board must consider
- 28 the following:
- 29 (1) Economic impact analyses, taking into account future
- 30 population and economic development growth.
- 31 (2) The biological criteria scores for the water body, using
- 32 factors that consider fish communities, macro invertebrate
- 33 communities, and chemical quality criteria using
- 34 representative biological data from the water body under
- 35 consideration.
- 36 (3) The level of current urban and agricultural development
- 37 in the watershed.
- 38 (g) The commissioner shall present a summary of the comments
- 39 received from the comment period and information that supports
- 40 a water body designation as an outstanding state resource water to
- 41 the environmental quality service council not later than one
- 42 hundred twenty (120) days after the rule regarding the designation



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1 is finally adopted by the board.

2 (h) Notwithstanding any other provision of this section, the
3 designation of an outstanding state resource water in effect on
4 January 1, 2000, remains in effect.

5 (i) For a water body designated as an outstanding state resource
6 water, the board shall provide by rule procedures that will result
7 in an overall improvement in watershed quality while also
8 providing for changes and additions to existing permittees'
9 pollutant loadings and allowing for new permits. These procedures
10 must include the following:

11 (1) A definition of significant lowering of water quality that
12 includes a de minimis quantity of additional pollutant load
13 below which antidegradation implementation procedures do
14 not apply.

15 (2) Utilization of water quality data that is less than five (5)
16 years old and specific to the outstanding state resource water.

17 (3) Optional water quality projects undertaken in the
18 outstanding state resource water's watershed that will offset
19 the new, altered, or increased pollutant loadings requested by
20 permittees, and criteria for approval of these projects that
21 include a process for public input.

22 (4) A waiver fee structure to remove requirements for
23 projects described in subdivision (3) upon payment by the
24 permittee of a fee not to exceed two hundred thousand dollars
25 (\$200,000) for any one permit.

26 (5) Criteria for using waiver fees to fund improvement
27 projects in the watershed.

28 (j) For a water body designated as an outstanding state resource
29 water after June 30, 2000, the board shall provide by rule
30 antidegradation implementation procedures for the water body
31 before it is designated.

32 (k) A water body may be designated as an outstanding national
33 resource water only by the general assembly after
34 recommendations for designation are made by the department and
35 the environmental quality service council.

36 (l) Before recommending the designation of an outstanding
37 national resource water, the department shall provide for an
38 adequate public notice and comment period regarding the
39 designation. The commissioner shall present a summary of the
40 comments and information received during the comment period
41 and the department's recommendation concerning designation to
42 the environmental quality service council not later than ninety (90)

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1 days after the end of the comment period. The council shall
2 consider the comments, information, and recommendation
3 received from the department, and shall convey its
4 recommendation concerning designation to the general assembly.

5 SECTION 3. [EFFECTIVE UPON PASSAGE] 327 IAC 2-1.5-4 is
6 void to the extent that it requires that an outstanding state resource
7 water must be maintained and protected in its present high quality
8 without degradation.

9 SECTION 4. [EFFECTIVE UPON PASSAGE] The water
10 pollution control board may not require that an outstanding state
11 resource water must be maintained and protected in its present
12 high quality without degradation.

13 SECTION 5. [EFFECTIVE UPON PASSAGE] (a) Before January
14 1, 2001, the water pollution control board shall amend 327
15 IAC 2-1.5-4 to reflect SECTION 3 of this act.

16 (b) This SECTION expires on the earlier of the following:

17 (1) The effective date of the rule amendment adopted under
18 subsection (a).

19 (2) January 1, 2001.

20 SECTION 6. An emergency is declared for this act.

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