January 26, 2000

SENATE BILL No. 432

DIGEST OF SB 432 (Updated January 24, 2000 2:48 PM - DI 52)

Citations Affected: IC 13-18; noncode.

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. Directs the department of environmental management to develop and maintain a data quality assurance management system to assess the validity and reliability of the data used in the listing of impaired waters and the special designation of waters. Directs the department of environmental management to appoint a water quality task force, establishes the subjects to be studied, and designates the agencies and interest groups from which the membership must be drawn.

Effective: Upon passage; July 1, 2000.

Gard

January 10, 2000, read first time and referred to Committee on Environmental Affairs.
January 25, 2000, amended, reported favorably — Do Pass.

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January 26, 2000

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.

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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:

SECTION 1. IC 13-18-2-3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: **Sec. 3. (a) The department shall prepare a list of impaired waters for the purpose of complying with Section 303(d) of the federal Clean Water Act (33 U.S.C. 1313(d)) once every five (5) years, or at the time interval prescribed in federal regulations, whichever is less. In determining whether a water body is impaired, the department shall consider all existing and available water quality related information that is credible, representative, and scientifically defensible. The list shall be adopted by rule before its submission to the United States Environmental Protection Agency.**

(b) The board shall adopt by rule the methodology to be used in identifying waters as impaired. The rule shall specify the methodology and criteria for including and removing waters from the list of impaired waters. The criteria for removing a water from the list of impaired waters shall not be any more stringent than the

criteria for adding a water body to that list.

(c) The list of impaired waters developed by the department shall contain a priority ranking of waters that are identified as impaired and for which total maximum daily loads will be required, as well as a schedule for the development of required total maximum daily loads. The schedule must be sufficient to ensure that all required total maximum daily loads will be developed within ten (10) years of the date the list is approved by the United States Environmental Protection Agency, or by the time prescribed in federal regulations, whichever is sooner.

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

(1) the environmental, economic, and technological feasibility of achieving the allocation;

(2) the cost and benefit associated with achieving the allocation; and

(3) any pollutant loading reductions reasonably expected to be achieved as a result of other legally required actions or voluntary measures.

(e) Once a total maximum daily load or an implementation plan is adopted for a water body, the department shall review the status of the water body to determine whether compliance with applicable surface water quality standards has been achieved. The department shall conduct the review once every five (5) years, or at the time interval prescribed in federal regulations, whichever is less. If compliance with applicable surface water quality standards has not been achieved, the department shall evaluate whether modification of the total maximum daily load or implementation plan is required.

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

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

(1) the Federal Water Pollution Control Act (33 U.S.C. 1251 et

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seq.), as in effect January 1, 1988; and

(2) the federal Safe Drinking Water Act (42 U.S.C. 300f through 300j), as in effect January 1, 1988;

except as provided in IC 14-37.

(b) "Outstanding national resource water" means a water body that is:

(1) designated under subsection (k) to have its water quality maintained and protected without degradation; and

(2) of high quality that constitutes an outstanding national resource, such as waters of national and state parks and wildlife refuges or waters of exceptional recreational or ecological significance.

(c) "Outstanding state resource water" means a water body:

(1) that is designated under subsection (e) to have its water quality improved; and

(2) that serves or could serve a unique or especially important recreational, ecological, or aesthetic function.

(d) "Watershed" has the meaning set forth in IC 14-8-2-310.

(e) The board may designate a water body as an outstanding state resource water by rule if the board determines the following:

(1) The water body has a unique ecological, recreational, or aesthetic significance.

(2) The water body is in a watershed that has less than three percent (3%) of its land in urban land uses and does not serve a municipality with a population greater than five thousand (5,000), unless the board determines that the designation of the water body as an outstanding state resource water will not adversely affect future population, development, and economic growth in the watershed.

(3) The designation of the water body as an outstanding state resource water is necessary to protect the unique ecological, recreational, or aesthetic significance of the water body.

(f) Before the board may adopt a rule designating a water body as an outstanding state resource water, the board must consider the following:

(1) Economic impact analyses, taking into account future population and economic development growth.

(2) The biological criteria scores for the water body, using factors that consider fish communities, macro invertebrate communities, and chemical quality criteria using representative biological data from the water body under consideration.

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(3) The level of current urban and agricultural development in the watershed.

(g) The commissioner shall present a summary of the comments received from the comment period and information that supports a water body designation as an outstanding state resource water to the environmental quality service council not later than one hundred twenty (120) days after the rule regarding the designation is finally adopted by the board.

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

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

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

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

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

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

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

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

(k) A water body may be designated as an outstanding national resource water only by the general assembly after recommendations for designation are made by the department and

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the environmental quality service council.

(l) Before recommending the designation of an outstanding national resource water, the department shall provide for an adequate public notice and comment period regarding the designation. The commissioner shall present a summary of the comments and information received during the comment period and the department's recommendation concerning designation to the environmental quality service council not later than ninety (90) days after the end of the comment period. The council shall consider the comments, information, and recommendation received from the department, and shall convey its recommendation concerning designation to the general assembly.

SECTION 3. [EFFECTIVE UPON PASSAGE] **327 IAC 2-1-2 and 327 IAC 2-1.5-4 are void to the extent that they require that an outstanding state resource water must be maintained and protected in its present high quality without degradation.**

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

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

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

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

(2) January 1, 2001.

SECTION 6. [EFFECTIVE ON PASSAGE] **(a) As used in this SECTION, "department" refers to the department of environmental management.**

(b) Before July 1, 2001, the department shall develop and maintain a data quality assurance management system to assess the validity and reliability of the data used in the implementation of IC 13-18-2-3, as added by this act, and IC 13-18-3-2, as amended by this act.

(c) The department:

(1) shall make data from the data quality assurance management system under subsection (b) available to the public upon request; and

(2) may charge a reasonable fee to persons requesting the data.

(d) The department shall use the data from the data quality

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assurance management system under subsection (b) to review the data as of January 1, 2002, supporting:

(1) the listing of impaired waters under IC 13-18-2-3, as added by this act; and

(2) the special designation of waters under IC 13-18-3-2, as amended by this act.

(e) If the data supporting a listing of a water body under IC 13-18-2-3, as added by this act, does not conform to the requirements established by the water pollution control board by rule, the department shall not include the water body on the next list submitted to the United States Environmental Protection Agency unless, in the interim before the submission, data satisfying the requirements established by the water pollution control board by rule has been collected or received by the department.

(f) Before January 1, 2001, the department shall appoint a water quality task force to assess the physical, chemical, and biological data collected and used by the department. The water quality task force shall study:

(1) quality assurance protocols;

(2) the need for improved data quality; and

(3) options for:

(A) obtaining and maintaining an adequate data base for water quality standard settings; and

(B) addressing impairments.

(g) The water quality task force appointed under subsection (f) shall include four (4) members of the general assembly and representatives of the following:

(1) The academic community in the disciplines of biology, chemistry, and hydrology.

(2) The department.

(3) The department of natural resources.

(4) The United States Geological Survey.

(5) Private chemical water testing laboratories.

(6) Industry.

(7) Agriculture.

(8) Environmental advocacy organizations.

(9) General citizens.

(10) Municipalities.

(11) The water pollution control board.

(12) Local public health officials.

(13) The state department of health.

(h) This SECTION expires July 1, 2002.

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SECTION 7. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. President: The Senate Committee on Environmental Affairs, to which was referred Senate Bill No. 432, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 4, after "of the" insert "**federal**".

Page 1, line 5, delete "at least".

Page 1, line 6, after "years" insert "**, or at the time interval prescribed in federal regulations, whichever is less**".

Page 1, line 7, delete "only reasonably current," and insert "**all existing and available water quality related information that is**".

Page 1, line 8, delete "data".

Page 2, line 6, delete "fifteen (15)" and insert "**ten (10)**".

Page 2, line 7, after "Agency" insert "**, or by the time prescribed in federal regulations, whichever is sooner**".

Page 2, line 20, delete "at least once every five (5) years".

Page 2, line 22, after "achieved." insert "**The department shall conduct the review once every five (5) years, or at the time interval prescribed in federal regulations, whichever is less.**".

Page 2, line 27, after "governor," insert "**the environmental quality service council,**".

Page 3, line 11, delete "and" and insert "**or**".

Page 3, line 18, delete "not".

Page 3, line 18, delete "an urban or developed" and insert "**a**".

Page 3, line 18, after "watershed" insert "**that has less than three percent (3%) of its land in urban land uses and does not serve a municipality with a population greater than five thousand (5,000)**".

Page 3, line 24, delete "or special" and insert "**ecological, recreational, or aesthetic significance**".

Page 3, line 25, delete "nature".

Page 4, line 20, after "permittees" insert "**as part of the antidegradation implementation procedures**".

Page 4, line 22, delete "waiver" and insert "**watershed improvement**".

Page 4, line 26, delete "waiver" and insert "**watershed improvement**".

Page 5, line 5, after "PASSAGE]" insert "**327 IAC 2-1-2 and**".

Page 5, line 5, delete "is" and insert "**are**".

Page 5, line 6, delete "it requires" and insert "**they require**".

Page 5, between lines 19 and 20, begin a new paragraph and insert:

"SECTION 6. [EFFECTIVE ON PASSAGE] **(a) As used in this**

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SECTION, "department" refers to the department of environmental management.

(b) Before July 1, 2001, the department shall develop and maintain a data quality assurance management system to assess the validity and reliability of the data used in the implementation of IC 13-18-2-3, as added by this act, and IC 13-18-3-2, as amended by this act.

(c) The department:

(1) shall make data from the data quality assurance management system under subsection (b) available to the public upon request; and

(2) may charge a reasonable fee to persons requesting the data.

(d) The department shall use the data from the data quality assurance management system under subsection (b) to review the data as of January 1, 2002, supporting:

(1) the listing of impaired waters under IC 13-18-2-3, as added by this act; and

(2) the special designation of waters under IC 13-18-3-2, as amended by this act.

(e) If the data supporting a listing of a water body under IC 13-18-2-3, as added by this act, does not conform to the requirements established by the water pollution control board by rule, the department shall not include the water body on the next list submitted to the United States Environmental Protection Agency unless, in the interim before the submission, data satisfying the requirements established by the water pollution control board by rule has been collected or received by the department.

(f) Before January 1, 2001, the department shall appoint a water quality task force to assess the physical, chemical, and biological data collected and used by the department. The water quality task force shall study:

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(A) obtaining and maintaining an adequate data base for water quality standard settings; and

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chemistry, and hydrology.
(2) The department.
(3) The department of natural resources.
(4) The United States Geological Survey.
(5) Private chemical water testing laboratories.
(6) Industry.
(7) Agriculture.
(8) Environmental advocacy organizations.
(9) General citizens.
(10) Municipalities.
(11) The water pollution control board.
(12) Local public health officials.
(13) The state department of health.
(h) This SECTION expires July 1, 2002.".
Renumber all sections consecutively.

and when so amended that said bill do pass.

(Reference is to SB 432 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 8, Nays 0.

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