
HOUSE BILL No. 1568

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-18-10.

Synopsis: Confined feeding operations and CAFOs. Provides that a person may not start: (1) the construction of a concentrated animal feeding operation (CAFO); or (2) an expansion of a CAFO that would increase animal capacity or manure containment capacity, or both; without obtaining the prior approval of the department of environmental management. Establishes financial assurance requirements for confined feeding operations and CAFOs. Requires the water pollution control board to adopt rules before January 1, 2012, to set the amount of financial assurance that is required.

Effective: Upon passage; January 1, 2012.

Sullivan, Saunders

January 20, 2011, read first time and referred to Committee on Agriculture and Rural Development.

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First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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HOUSE BILL No. 1568



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 13-18-10-1, AS AMENDED BY P.L.1-2010,
2 SECTION 62, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2012]: Sec. 1. A person may not start:

- 4 (1) **the** construction of a:
5 (A) confined feeding operation; or

- 6 (B) CAFO; or
7 (2) **an** expansion of a:
8 (A) confined feeding operation; or

- 9 (B) CAFO;
10 that increases animal capacity or manure containment capacity,
11 or both;

12 without obtaining the prior approval of the department.

13 SECTION 2. IC 13-18-10-1.5 IS ADDED TO THE INDIANA
14 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
15 [EFFECTIVE JANUARY 1, 2012]: **Sec. 1.5. (a) This section applies**
16 **to the following:**

- 17 (1) **A person who applies for approval under section 1 of this**



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chapter and whose application:

(A) is:

(i) filed with the department; and

(ii) not approved by the department;

before January 1, 2012; or

(B) is filed with the department after December 31, 2011.

(2) A person who applies for approval under 327 IAC 5 of an individual NPDES permit for a CAFO and whose application:

(A) is:

(i) filed with the department; and

(ii) not approved by the department;

before January 1, 2012; or

(B) is filed with the department after December 31, 2011.

(3) A person who files a notice of intent under 327 IAC 15 for general NPDES permit coverage for a CAFO after December 31, 2011.

(4) A person who:

(A) applied for and received approval from the department for an application described in subdivision (1) or (2); or

(B) filed a notice of intent described in subdivision (3);

before January 1, 2012.

(b) A person referred to in subsection (a)(1) or (a)(2) must include proof of financial assurance described in subsection (e) with the application filed under subsection (a)(1) or (a)(2).

(c) A person referred to in subsection (a)(3) must include proof of financial assurance described in subsection (e) with the notice of intent filed under 327 IAC 15 for general NPDES permit coverage for the CAFO.

(d) A person referred to in subsection (a)(4) shall submit proof of financial assurance described in subsection (e) to the department before July 1, 2012.

(e) A person referred to in subsection (b), (c), or (d) shall submit to the department evidence of financial assurance of the ability to pay for the following with respect to the person's confined feeding operation or CAFO:

(1) Closure.

(2) Postclosure monitoring and maintenance.

(3) Spill response.

(4) Compensation of third parties for:

(A) bodily injury; or

(B) property damage;

caused by accidental or intentional releases.

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1 (f) The financial assurance required under this section must be
2 maintained in accordance with and in amounts established by rules
3 adopted under section 4(c) of this chapter, and must be in one (1)
4 of the following forms:

5 (1) A:

6 (A) bond for performance, executed by a corporate surety
7 licensed to do business in Indiana;

8 (B) negotiable certificate of deposit; or

9 (C) negotiable letter of credit;

10 payable to the department and conditional upon faithful
11 performance of the requirements of this chapter and
12 compliance with other environmental laws.

13 (2) An insurance policy.

14 (3) A trust fund.

15 (4) The satisfaction of a financial test that establishes an
16 ability to self-insure.

17 (5) A corporate guarantee.

18 SECTION 3. IC 13-18-10-1.9, AS ADDED BY P.L.1-2010,
19 SECTION 63, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
20 JANUARY 1, 2012]: Sec. 1.9. (a) This section applies:

21 (1) to a confined feeding operation **or CAFO** for which a person
22 is required to submit an application for approval under section 1
23 of this chapter if an application for approval under section 1 of
24 this chapter submitted with respect to the confined feeding
25 operation **or CAFO** was not approved by the department before
26 May 12, 2009; and

27 (2) notwithstanding the effective date of the addition or
28 amendment by P.L.127-2009 of the provisions listed in subsection
29 (b)(1) through (b)(8).

30 (b) The following, as added or amended by P.L.127-2009, effective
31 July 1, 2009, apply to a confined feeding operation **or CAFO** described
32 in subsection (a)(1) in the same manner as if they had been in effect on
33 the date on which the application was submitted with respect to the
34 confined feeding operation **or CAFO** under section 1 of this chapter:

35 (1) IC 13-11-2-8.

36 (2) IC 13-11-2-40.

37 (3) IC 13-11-2-191.

38 (4) Section 1 of this chapter.

39 (5) Section 2 of this chapter.

40 (6) Section 2.1 of this chapter.

41 (7) Section 2.2 of this chapter.

42 (8) Section 4 of this chapter.

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1 SECTION 4. IC 13-18-10-2, AS AMENDED BY P.L.127-2009,
2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2012]: Sec. 2. (a) Application for approval under section
4 1 of this chapter of the construction or expansion of a confined feeding
5 operation **or CAFO** must be made on a form provided by the
6 department. An applicant must submit the completed application form
7 to the department together with the following:

8 (1) Plans and specifications for the design and operation of
9 manure treatment and control facilities.

10 (2) A manure management plan that outlines procedures for the
11 following:

12 (A) Soil testing.

13 (B) Manure testing.

14 (3) Maps of manure application areas.

15 (4) Supplemental information that the department requires,
16 including the following:

17 (A) General features of topography.

18 (B) Soil types.

19 (C) Drainage course.

20 (D) Identification of nearest streams, ditches, and lakes.

21 (E) Location of field tiles.

22 (F) Location of land application areas.

23 (G) Location of manure treatment facilities.

24 (H) Farmstead plan, including the location of water wells on
25 the site.

26 (5) A fee of one hundred dollars (\$100). The department shall
27 refund the fee if the department does not make a determination in
28 accordance with the time period established under section 2.1 of
29 this chapter.

30 **(6) A closure plan.**

31 **(7) The proof of financial assurance required under section**
32 **1.5 of this chapter.**

33 (b) An applicant who applies for approval under section 1 of this
34 chapter to construct or expand a confined feeding operation **or a**
35 **CAFO** on land for which a valid existing approval has not been issued
36 shall make a reasonable effort to provide notice not more than ten (10)
37 working days after submitting an application:

38 (1) to the county executive of the county in which the confined
39 feeding operation **or CAFO** is to be located or expanded; and

40 (2) to each owner and each occupant of land of which any part of
41 the boundary is one-half (1/2) mile or less from the following:

42 (A) Any part of the proposed footprint of either or both of the

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- 1 following to be located on the land on which the confined
- 2 feeding operation **or CAFO** is to be located:
- 3 (i) A livestock or poultry production structure.
- 4 (ii) A permanent manure storage facility.
- 5 (B) Any part of the proposed footprint of either or both of the
- 6 following to be located on the land on which the confined
- 7 feeding operation **or CAFO** is to be expanded:
- 8 (i) A livestock or poultry production structure.
- 9 (ii) The expanded area of a livestock or poultry production
- 10 structure.

11 The notice must be sent by mail, be in writing, include the date on
 12 which the application was submitted to the department, and include a
 13 brief description of the subject of the application. The applicant shall
 14 pay the cost of complying with this subsection. The applicant shall
 15 submit an affidavit to the department that certifies that the applicant
 16 has complied with this subsection.

17 (c) Plans and specifications for manure treatment or control
 18 facilities for a confined feeding operation **or CAFO** must secure the
 19 approval of the department. The department shall approve the
 20 construction or expansion and the operation of the manure management
 21 system of the confined feeding operation **or CAFO** if the
 22 commissioner determines that the applicant meets the requirements of:

- 23 (1) this chapter;
- 24 (2) rules adopted under this chapter;
- 25 (3) the water pollution control laws;
- 26 (4) rules adopted under the water pollution control laws; and
- 27 (5) policies and statements adopted under IC 13-14-1-11.5
- 28 relative to confined feeding operations **and CAFOs**.

29 SECTION 5. IC 13-18-10-2.1, AS AMENDED BY P.L.127-2009,
 30 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JANUARY 1, 2012]: Sec. 2.1. (a) The department:

- 32 (1) shall make a determination on an application made under
- 33 section 2 of this chapter not later than ninety (90) days after the
- 34 date the department receives the completed application, including
- 35 all required supplemental information, unless the department and
- 36 the applicant agree to a longer time; and
- 37 (2) may conduct any inquiry or investigation, consistent with the
- 38 department's duties under this chapter, the department considers
- 39 necessary before making a determination.

40 (b) If the department fails to make a determination on an application
 41 not later than ninety (90) days after the date the department receives
 42 the completed application, the applicant may request and receive a

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1 refund of an approval application fee paid by the applicant, and the
2 commissioner shall:

- 3 (1) continue to review the application;
- 4 (2) approve or deny the application as soon as practicable; and
- 5 (3) refund the applicant's application fee not later than twenty-five
6 (25) working days after the receipt of the applicant's request.

7 (c) The commissioner may suspend the processing of an application
8 and the ninety (90) day period described under this section if the
9 department determines within thirty (30) days after the department
10 receives the application that the application is incomplete and has
11 mailed a notice of deficiency to the applicant that specifies the parts of
12 the application that:

- 13 (1) do not contain adequate information for the department to
14 process the application; or
- 15 (2) are not consistent with applicable law.

16 (d) The department may establish requirements in an approval
17 regarding that part of the confined feeding operation **or CAFO** that
18 concerns manure handling and application to assure compliance with:

- 19 (1) this chapter;
- 20 (2) rules adopted under this chapter;
- 21 (3) the water pollution control laws;
- 22 (4) rules adopted under the water pollution control laws; and
- 23 (5) policies and statements adopted under IC 13-14-1-11.5
24 relative to confined feeding operations **or CAFOs**.

25 (e) Subject to subsection (f), the commissioner may deny an
26 application upon making either or both of the following findings:

- 27 (1) A responsible party intentionally misrepresented or concealed
28 any material fact in either or both of the following:
29 (A) An application for approval under section 1 of this
30 chapter.
31 (B) A disclosure statement required by section 1.4 of this
32 chapter.
- 33 (2) An enforcement action was resolved against a responsible
34 party as described in either or both of the following:
35 (A) Section 1.4(c)(5) of this chapter.
36 (B) Section 1.4(c)(6) of this chapter.

37 (f) Before making a determination to approve or deny an
38 application, the commissioner must consider the following factors:

- 39 (1) The nature and details of the acts attributed to the responsible
40 party.
- 41 (2) The degree of culpability of the responsible party.
- 42 (3) The responsible party's cooperation with the state, federal, or

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1 foreign agencies involved in the investigation of the activities
 2 involved in actions referred to in section 1.4(c)(5) and 1.4(c)(6)
 3 of this chapter.

4 (4) The responsible party's dissociation from any other persons or
 5 entities convicted in a criminal enforcement action referred to in
 6 section 1.4(c)(5) and 1.4(c)(6) of this chapter.

7 (5) Prior or subsequent self-policing or internal education
 8 programs established by the responsible party to prevent acts,
 9 omissions, or violations referred to in section 1.4(c)(5) and
 10 1.4(c)(6) of this chapter.

11 (g) Except as provided in subsection (h), in taking action under
 12 subsection (e), the commissioner must make separately stated findings
 13 of fact to support the action taken. The findings of fact must:

- 14 (1) include a statement of ultimate fact; and
 15 (2) be accompanied by a concise statement of the underlying
 16 basic facts of record to support the findings.

17 (h) If the commissioner denies an application under subsection (e),
 18 the commissioner is not required to explain the extent to which any of
 19 the factors set forth in subsection (f) influenced the denial.

20 (i) The department may amend an approval under section 1 of this
 21 chapter or revoke an approval under section 1 of this chapter:

- 22 (1) for failure to comply with:
 23 (A) this chapter;
 24 (B) rules adopted under this chapter;
 25 (C) the water pollution control laws; or
 26 (D) rules adopted under the water pollution control laws; and
 27 (2) as needed to prevent discharges of manure into the
 28 environment that pollute or threaten to pollute the waters of the
 29 state.

30 SECTION 6. IC 13-18-10-2.2, AS AMENDED BY P.L.127-2009,
 31 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JANUARY 1, 2012]: Sec. 2.2. (a) If an applicant receives an approval
 33 under this chapter and completes construction or expansion, not more
 34 than thirty (30) days after the date the applicant completes the
 35 construction or expansion the applicant shall execute and send to the
 36 department an affidavit that affirms under penalties of perjury that the
 37 confined feeding operation **or CAFO**:

- 38 (1) was constructed or expanded; and
 39 (2) will be operated;
 40 in accordance with the requirements of the department's approval.

41 (b) Construction or expansion of an approved confined feeding
 42 operation **or CAFO** must:

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1 (1) begin not later than two (2) years; and
 2 (2) be completed not later than four (4) years;
 3 after the date the department approves the construction or expansion of
 4 the confined feeding operation **or CAFO** or the date all appeals
 5 brought under IC 4-21.5 concerning the construction or expansion of
 6 the confined feeding operation **or CAFO** have been completed,
 7 whichever is later.

8 SECTION 7. IC 13-18-10-2.3 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JANUARY 1, 2012]: Sec. 2.3. A confined
 10 feeding operation **or CAFO** must submit a manure management plan
 11 that outlines procedures for soil testing, manure testing, and maps of
 12 manure application areas to the department at least one (1) time every
 13 five (5) years to maintain valid approval for the confined feeding
 14 operation **or CAFO** under this chapter.

15 SECTION 8. IC 13-18-10-2.6 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JANUARY 1, 2012]: Sec. 2.6. The
 17 department shall establish a compliance and technical assistance
 18 program for owners and operators of confined feeding operations **and**
 19 **CAFOs** that may be administered by:

- 20 (1) the department;
- 21 (2) a state college or university; or
- 22 (3) a contractor.

23 SECTION 9. IC 13-18-10-4, AS AMENDED BY P.L.127-2009,
 24 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JANUARY 1, 2012]: Sec. 4. (a) **Subject to subsection (c)**, the board
 26 may adopt rules under IC 4-22-2 and IC 13-14-9 and the department
 27 may adopt policies or statements under IC 13-14-1-11.5 that are
 28 necessary for the proper administration of this chapter. The rules,
 29 policies, or statements may concern construction, expansion, and
 30 operation of confined feeding operations **and CAFOs** and may include
 31 uniform standards for:

- 32 (1) construction, expansion, and manure containment that are
 33 appropriate for a specific site; and
- 34 (2) manure application and handling that are consistent with best
 35 management practices:
 - 36 (A) designed to reduce the potential for manure to be
 37 conveyed off a site by runoff or soil erosion; and
 - 38 (B) that are appropriate for a specific site.
- 39 (b) Standards adopted in a rule, policy, or statement under
 40 subsection (a) must:
 - 41 (1) consider confined feeding standards that are consistent with
 42 standards found in publications from:

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1 (A) the United States Department of Agriculture;
 2 (B) the Natural Resources Conservation Service of the United
 3 States Department of Agriculture;
 4 (C) the Midwest Plan Service; and
 5 (D) postsecondary educational institution extension bulletins;
 6 and
 7 (2) be developed through technical review by the department,
 8 postsecondary educational institution specialists, and other animal
 9 industry specialists.
 10 **(c) The board shall:**
 11 **(1) adopt rules under IC 4-22-2 and IC 13-14-9 to set the**
 12 **amount of financial assurance required of a person under**
 13 **section 1.5(f) of this chapter; and**
 14 **(2) set graduated amounts under subdivision (1) for categories**
 15 **of operations determined by the board based on the animal**
 16 **capacity of the operations, taking into consideration the**
 17 **greater potential liability associated with larger operations.**
 18 SECTION 10. [EFFECTIVE UPON PASSAGE] **(a) The water**
 19 **pollution control board shall adopt the rules required under**
 20 **IC 13-18-10-4(c), as added by this act, before January 1, 2012.**
 21 **(b) This SECTION expires January 2, 2012.**
 22 SECTION 11. **An emergency is declared for this act.**

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