
SENATE BILL No. 157

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. Provides for financial assurance requirements to be imposed on confined feeding operations and CAFOs through the adoption of administrative rules. Requires the environmental rules board to adopt rules establishing the financial assurance requirements before January 1, 2014.

Effective: Upon passage; January 1, 2014.

Paul

January 7, 2013, read first time and referred to Committee on Environmental Affairs.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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SENATE BILL No. 157



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, 2014]: Sec. 1. A person may not start:
- 4 (1) **the** construction of:
- 5 (A) a confined feeding operation; or
- 6 (B) **a CAFO; or**
- 7 (2) **an** expansion of:
- 8 (A) a confined feeding operation; **or**
- 9 (B) **a 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, 2014]: **Sec. 1.5. (a) This section applies**
- 16 **to the following:**
- 17 (1) **A person who applies for approval under section 1 of this**



1 chapter and whose application:

2 (A) is:

3 (i) filed with the department; but

4 (ii) not approved by the department;

5 before January 1, 2014; or

6 (B) is filed with the department after December 31, 2013.

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

9 (A) is:

10 (i) filed with the department; but

11 (ii) not approved by the department;

12 before January 1, 2014; or

13 (B) is filed with the department after December 31, 2013.

14 (3) A person who files a notice of intent under 327 IAC 15 for
15 general NPDES permit coverage for a CAFO after December
16 31, 2013.

17 (4) A person who:

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

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

21 before January 1, 2014.

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

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

29 (d) A person referred to in subsection (a)(4) shall submit proof
30 of financial assurance described in subsection (e) to the department
31 before July 1, 2014.

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

36 (1) Closure.

37 (2) Postclosure monitoring and maintenance.

38 (3) Spill response.

39 (4) Compensation of third parties for:

40 (A) bodily injury; and

41 (B) property damage;

42 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 13-18-10-2, AS AMENDED BY P.L.127-2009,
 19 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JANUARY 1, 2014]: Sec. 2. (a) Application for approval under section
 21 1 of this chapter of the construction or expansion of a confined feeding
 22 operation **or CAFO** must be made on a form provided by the
 23 department. An applicant must submit the completed application form
 24 to the department together with the following:

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

27 (2) A manure management plan that outlines procedures for the
 28 following:

29 (A) Soil testing.

30 (B) Manure testing.

31 (3) Maps of manure application areas.

32 (4) Supplemental information that the department requires,
 33 including the following:

34 (A) General features of topography.

35 (B) Soil types.

36 (C) Drainage course.

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

38 (E) Location of field tiles.

39 (F) Location of land application areas.

40 (G) Location of manure treatment facilities.

41 (H) Farmstead plan, including the location of water wells on
 42 the site.

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

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

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

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

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

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

17 (A) Any part of the proposed footprint of either or both of the
 18 following to be located on the land on which the confined
 19 feeding operation **or CAFO** is to be located:

20 (i) A livestock or poultry production structure.

21 (ii) A permanent manure storage facility.

22 (B) Any part of the proposed footprint of either or both of the
 23 following to be located on the land on which the confined
 24 feeding operation **or CAFO** is to be expanded:

25 (i) A livestock or poultry production structure.

26 (ii) The expanded area of a livestock or poultry production
 27 structure.

28 The notice must be sent by mail, be in writing, include the date on
 29 which the application was submitted to the department, and include a
 30 brief description of the subject of the application. The applicant shall
 31 pay the cost of complying with this subsection. The applicant shall
 32 submit an affidavit to the department that certifies that the applicant
 33 has complied with this subsection.

34 (c) Plans and specifications for manure treatment or control
 35 facilities for a confined feeding operation **or CAFO** must secure the
 36 approval of the department. The department shall approve the
 37 construction or expansion and the operation of the manure management
 38 system of the confined feeding operation **or CAFO** if the
 39 commissioner determines that the applicant meets the requirements of:

40 (1) this chapter;

41 (2) rules adopted under this chapter;

42 (3) the water pollution control laws;

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1 (4) rules adopted under the water pollution control laws; and
 2 (5) policies and statements adopted under IC 13-14-1-11.5
 3 relative to confined feeding operations **and CAFOs**.
 4 SECTION 4. IC 13-18-10-2.1, AS AMENDED BY P.L.127-2009,
 5 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JANUARY 1, 2014]: Sec. 2.1. (a) The department:
 7 (1) shall make a determination on an application made under
 8 section 2 of this chapter not later than ninety (90) days after the
 9 date the department receives the completed application, including
 10 all required supplemental information, unless the department and
 11 the applicant agree to a longer time; and
 12 (2) may conduct any inquiry or investigation, consistent with the
 13 department's duties under this chapter, the department considers
 14 necessary before making a determination.
 15 (b) If the department fails to make a determination on an application
 16 not later than ninety (90) days after the date the department receives
 17 the completed application, the applicant may request and receive a
 18 refund of an approval application fee paid by the applicant, and the
 19 commissioner shall:
 20 (1) continue to review the application;
 21 (2) approve or deny the application as soon as practicable; and
 22 (3) refund the applicant's application fee not later than twenty-five
 23 (25) working days after the receipt of the applicant's request.
 24 (c) The commissioner may suspend the processing of an application
 25 and the ninety (90) day period described under this section if the
 26 department determines within thirty (30) days after the department
 27 receives the application that the application is incomplete and has
 28 mailed a notice of deficiency to the applicant that specifies the parts of
 29 the application that:
 30 (1) do not contain adequate information for the department to
 31 process the application; or
 32 (2) are not consistent with applicable law.
 33 (d) The department may establish requirements in an approval
 34 regarding that part of the confined feeding operation **or CAFO** that
 35 concerns manure handling and application to assure compliance with:
 36 (1) this chapter;
 37 (2) rules adopted under this chapter;
 38 (3) the water pollution control laws;
 39 (4) rules adopted under the water pollution control laws; and
 40 (5) policies and statements adopted under IC 13-14-1-11.5
 41 relative to confined feeding operations **or CAFOs**.
 42 (e) Subject to subsection (f), the commissioner may deny an

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- 1 application upon making either or both of the following findings:
 2 (1) A responsible party intentionally misrepresented or concealed
 3 any material fact in either or both of the following:
 4 (A) An application for approval under section 1 of this
 5 chapter.
 6 (B) A disclosure statement required by section 1.4 of this
 7 chapter.
 8 (2) An enforcement action was resolved against a responsible
 9 party as described in either or both of the following:
 10 (A) Section 1.4(c)(5) of this chapter.
 11 (B) Section 1.4(c)(6) of this chapter.
 12 (f) Before making a determination to approve or deny a
 13 application, the commissioner must consider the following factors:
 14 (1) The nature and details of the acts attributed to the responsible
 15 party.
 16 (2) The degree of culpability of the responsible party.
 17 (3) The responsible party's cooperation with the state, federal, or
 18 foreign agencies involved in the investigation of the activities
 19 involved in actions referred to in section 1.4(c)(5) and 1.4(c)(6)
 20 of this chapter.
 21 (4) The responsible party's dissociation from any other persons or
 22 entities convicted in a criminal enforcement action referred to in
 23 section 1.4(c)(5) and 1.4(c)(6) of this chapter.
 24 (5) Prior or subsequent self-policing or internal education
 25 programs established by the responsible party to prevent acts,
 26 omissions, or violations referred to in section 1.4(c)(5) and
 27 1.4(c)(6) of this chapter.
 28 (g) Except as provided in subsection (h), in taking action under
 29 subsection (e), the commissioner must make separately stated findings
 30 of fact to support the action taken. The findings of fact must:
 31 (1) include a statement of ultimate fact; and
 32 (2) be accompanied by a concise statement of the underlying
 33 basic facts of record to support the findings.
 34 (h) If the commissioner denies an application under subsection (e),
 35 the commissioner is not required to explain the extent to which any of
 36 the factors set forth in subsection (f) influenced the denial.
 37 (i) The department may amend an approval under section 1 of this
 38 chapter or revoke an approval under section 1 of this chapter:
 39 (1) for failure to comply with:
 40 (A) this chapter;
 41 (B) rules adopted under this chapter;
 42 (C) the water pollution control laws; or

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1 (D) rules adopted under the water pollution control laws; and
 2 (2) as needed to prevent discharges of manure into the
 3 environment that pollute or threaten to pollute the waters of the
 4 state.

5 SECTION 5. IC 13-18-10-2.2, AS AMENDED BY P.L.127-2009,
 6 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JANUARY 1, 2014]: Sec. 2.2. (a) If an applicant receives an approval
 8 under this chapter and completes construction or expansion, not more
 9 than thirty (30) days after the date the applicant completes the
 10 construction or expansion the applicant shall execute and send to the
 11 department an affidavit that affirms under penalties of perjury that the
 12 confined feeding operation **or CAFO**:

13 (1) was constructed or expanded; and
 14 (2) will be operated;

15 in accordance with the requirements of the department's approval.

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

18 (1) begin not later than two (2) years; and
 19 (2) be completed not later than four (4) years;

20 after the date the department approves the construction or expansion of
 21 the confined feeding operation **or CAFO** or the date all appeals
 22 brought under IC 4-21.5 concerning the construction or expansion of
 23 the confined feeding operation **or CAFO** have been completed,
 24 whichever is later.

25 SECTION 6. IC 13-18-10-2.3 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JANUARY 1, 2014]: Sec. 2.3. A confined
 27 feeding operation **or CAFO** must submit a manure management plan
 28 that outlines procedures for soil testing, manure testing, and maps of
 29 manure application areas to the department at least one (1) time every
 30 five (5) years to maintain valid approval for the confined feeding
 31 operation **or CAFO** under this chapter.

32 SECTION 7. IC 13-18-10-2.6 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JANUARY 1, 2014]: Sec. 2.6. The
 34 department shall establish a compliance and technical assistance
 35 program for owners and operators of confined feeding operations **and**
 36 **CAFOs** that may be administered by:

37 (1) the department;
 38 (2) a state college or university; or
 39 (3) a contractor.

40 SECTION 8. IC 13-18-10-4, AS AMENDED BY P.L.127-2009,
 41 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JANUARY 1, 2014]: Sec. 4. (a) **Subject to subsection (c)**, the board

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1 may adopt rules under IC 4-22-2 and IC 13-14-9 and the department
 2 may adopt policies or statements under IC 13-14-1-11.5 that are
 3 necessary for the proper administration of this chapter. The rules,
 4 policies, or statements may concern construction, expansion, and
 5 operation of confined feeding operations **and CAFOs** and may include
 6 uniform standards for:

7 (1) construction, expansion, and manure containment that are
 8 appropriate for a specific site; and

9 (2) manure application and handling that are consistent with best
 10 management practices:

11 (A) designed to reduce the potential for manure to be
 12 conveyed off a site by runoff or soil erosion; and

13 (B) that are appropriate for a specific site.

14 (b) Standards adopted in a rule, policy, or statement under
 15 subsection (a) must:

16 (1) consider confined feeding standards that are consistent with
 17 standards found in publications from:

18 (A) the United States Department of Agriculture;

19 (B) the Natural Resources Conservation Service of the United
 20 States Department of Agriculture;

21 (C) the Midwest Plan Service; and

22 (D) postsecondary educational institution extension bulletins;
 23 and

24 (2) be developed through technical review by the department,
 25 postsecondary educational institution specialists, and other animal
 26 industry specialists.

27 **(c) The board shall:**

28 **(1) adopt rules under IC 4-22-2 and IC 13-14-9 to set the**
 29 **amount of financial assurance required of a person under**
 30 **section 1.5 of this chapter with respect to a confined feeding**
 31 **operation or a CAFO; and**

32 **(2) set graduated amounts under subdivision (1) for categories**
 33 **of operations determined by the board based on the animal**
 34 **capacity of the operations, taking into consideration the**
 35 **greater potential liability associated with larger operations.**

36 SECTION 9. [EFFECTIVE UPON PASSAGE] **(a) The**
 37 **environmental rules board shall adopt the rules required under**
 38 **IC 13-18-10-4(c), as added by this act, before January 1, 2014. The**
 39 **rules as adopted must become effective January 1, 2014.**

40 **(b) This SECTION expires January 1, 2015.**

41 SECTION 10. **An emergency is declared for this act.**

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