

HOUSE BILL No. 1161

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-18-10-2.1.

Synopsis: Confined feeding operation application approval. Provides that before the department of environmental management (department) may: (1) deny a person's application for approval of the construction or expansion of a confined feeding operation (except for a denial for certain reasons); or (2) amend or revoke the approval it previously granted to a person for the construction or expansion of a confined feeding operation; the department must allow the person an opportunity to correct or amend the application for approval without requiring the person to repeat any part of the approval process that is not affected by the correction or amendment of the application.

Effective: July 1, 2013.

Baird, Friend, Negele, Battles

January 10, 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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HOUSE BILL No. 1161



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 13-18-10-2.1, AS AMENDED BY P.L.127-2009,
 2 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2013]: Sec. 2.1. (a) The department:
 4 (1) shall make a determination on an application made under
 5 section 2 of this chapter not later than ninety (90) days after the
 6 date the department receives the completed application, including
 7 all required supplemental information, unless the department and
 8 the applicant agree to a longer time; and
 9 (2) may conduct any inquiry or investigation, consistent with the
 10 department's duties under this chapter, the department considers
 11 necessary before making a determination.
 12 (b) If the department fails to make a determination on an application
 13 not later than ninety (90) days after the date the department receives
 14 the completed application, the applicant may request and receive a
 15 refund of an approval application fee paid by the applicant, and the
 16 commissioner shall:
 17 (1) continue to review the application;



- 1 (2) approve or deny the application as soon as practicable; and
 2 (3) refund the applicant's application fee not later than twenty-five
 3 (25) working days after the receipt of the applicant's request.
 4 (c) The commissioner may suspend the processing of an application
 5 and the ninety (90) day period described under this section if the
 6 department determines within thirty (30) days after the department
 7 receives the application that the application is incomplete and has
 8 mailed a notice of deficiency to the applicant that specifies the parts of
 9 the application that:
 10 (1) do not contain adequate information for the department to
 11 process the application; or
 12 (2) are not consistent with applicable law.
 13 (d) The department may establish requirements in an approval
 14 regarding that part of the confined feeding operation that concerns
 15 manure handling and application to assure compliance with:
 16 (1) this chapter;
 17 (2) rules adopted under this chapter;
 18 (3) the water pollution control laws;
 19 (4) rules adopted under the water pollution control laws; and
 20 (5) policies and statements adopted under IC 13-14-1-11.5
 21 relative to confined feeding operations.
 22 (e) Subject to subsection (f), the commissioner may deny a
 23 application upon making either or both of the following findings:
 24 (1) A responsible party intentionally misrepresented or concealed
 25 any material fact in either or both of the following:
 26 (A) An application for approval under section 1 of this
 27 chapter.
 28 (B) A disclosure statement required by section 1.4 of this
 29 chapter.
 30 (2) An enforcement action was resolved against a responsible
 31 party as described in either or both of the following:
 32 (A) Section 1.4(c)(5) of this chapter.
 33 (B) Section 1.4(c)(6) of this chapter.
 34 (f) Before making a determination to approve or deny an
 35 application, the commissioner must consider the following factors:
 36 (1) The nature and details of the acts attributed to the responsible
 37 party.
 38 (2) The degree of culpability of the responsible party.
 39 (3) The responsible party's cooperation with the state, federal, or
 40 foreign agencies involved in the investigation of the activities
 41 involved in actions referred to in section 1.4(c)(5) and 1.4(c)(6)
 42 of this chapter.

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

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

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

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

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

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

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

27 **(j) Before the department may:**

- 28 **(1) deny a person's application for approval of the**
 29 **construction or expansion of a confined feeding operation for**
 30 **a reason other than those set forth in subsection (e)(1) or**
 31 **(e)(2); or**

32 **(2) under subsection (i), amend or revoke the approval it**
 33 **previously granted to a person under this chapter for the**
 34 **construction or expansion of a confined feeding operation;**
 35 **the department shall provide the person an opportunity to correct**
 36 **or amend the application for approval without requiring the**
 37 **person to repeat any part of the approval process under this**
 38 **chapter that is not affected by the correction or amendment of the**
 39 **application. The period allowed to a person to correct or amend an**
 40 **application under this subsection shall not be considered part of**
 41 **the ninety (90) day period within which the department is required**
 42 **to make a determination on an application under subsection (a)(1).**

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