

# HOUSE BILL No. 1404

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## DIGEST OF INTRODUCED BILL

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

**Synopsis:** Confined feeding financial ability requirements. Provides that, after December 31, 2014, 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. Requires, after December 31, 2014, a person who applies or has applied to the department of environmental management for approval of a confined feeding operation or CAFO, or for an individual water pollution control permit for a CAFO, to prove the person's financial ability to pay for closure, postclosure monitoring and maintenance, spill response, and compensation of third parties for bodily injury and property damage in the event of an accidental or intentional release from the person's confined feeding operation or CAFO. Requires the environmental rules board to adopt rules to become effective not later than January 1, 2015, concerning the financial ability requirements.

**Effective:** July 1, 2014; January 1, 2015.

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**Saunders**

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January 16, 2014, read first time and referred to Committee on Environmental Affairs.

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Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

## HOUSE BILL No. 1404

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 JULY 1, 2014]: Sec. 1. **(a) This subsection applies until January 1,**  
4 **2015. A person may not start:**  
5 (1) construction of a confined feeding operation; or  
6 (2) expansion of a confined feeding operation that increases  
7 animal capacity or manure containment capacity, or both;  
8 without obtaining the prior approval of the department.  
9 **(b) This subsection applies after December 31, 2014. A person**  
10 **may not start:**  
11 **(1) the construction of:**  
12 **(A) a confined feeding operation; or**  
13 **(B) a CAFO; or**  
14 **(2) an expansion of:**  
15 **(A) a confined feeding operation; or**  
16 **(B) a CAFO;**



1           that increases animal capacity or manure containment  
2           capacity, or both;  
3       **without obtaining the prior approval of the department.**

4       SECTION 2. IC 13-18-10-1.5 IS ADDED TO THE INDIANA  
5       CODE AS A NEW SECTION TO READ AS FOLLOWS  
6       [EFFECTIVE JULY 1, 2014]: **Sec. 1.5. (a) This section applies to the**  
7       **following:**

8           **(1) A person who applies for approval under section 1 of this**  
9           **chapter and whose application:**

10           (A) is:

11           (i) filed with the department; but

12           (ii) not approved by the department;

13           before January 1, 2015; or

14           (B) is filed with the department after December 31, 2014.

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

17           (A) is:

18           (i) filed with the department; but

19           (ii) not approved by the department;

20           before January 1, 2015; or

21           (B) is filed with the department after December 31, 2014.

22           **(3) A person who files a notice of intent under 327 IAC 15 for**  
23           **general NPDES permit coverage for a CAFO after December**  
24           **31, 2014.**

25           **(4) A person who:**

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

28           or

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

30           before January 1, 2015.

31           (b) As used in this section, "financial ability" means a person's  
32           ability to meet the potential costs set forth in subsection (f) in the  
33           event of an accidental or intentional release from the person's  
34           confined feeding operation or CAFO.

35           (c) A person referred to in subsection (a)(1) or (a)(2) must, after  
36           December 31, 2014, provide proof of financial ability under  
37           subsection (f) in support of the application filed under subsection  
38           (a)(1) or (a)(2).

39           (d) A person referred to in subsection (a)(3) must include proof  
40           of financial ability under subsection (f) with the notice of intent  
41           filed under 327 IAC 15 for general NPDES permit coverage for the  
42           CAFO.



(e) A person referred to in subsection (a)(4) shall submit proof of financial ability under subsection (f) to the department before July 1, 2015.

(f) A person referred to in subsection (c), (d), or (e) shall submit to the department proof of the person's financial ability to pay for the following with respect to the person's confined feeding operation or CAFO in the event of an accidental or intentional release from the confined feeding operation or CAFO:

(1) Closure.

(2) Postclosure monitoring and maintenance.

(3) Spill response.

(4) Compensation of third parties for:

(A) bodily injury; and

(B) property damage;

caused by the accidental or intentional release.

(g) The proof of financial ability required under this section must be maintained in accordance with and in amounts established by rules adopted under section 4(d) of this chapter and must be in one (1) of the following forms:

(1) A:

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

(B) negotiable certificate of deposit; or

(C) negotiable letter of credit;

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

(2) An insurance policy.

(3) A trust fund.

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

(5) A corporate guarantee.

SECTION 3. IC 13-18-10-2, AS AMENDED BY P.L.127-2009, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2015]: Sec. 2. (a) Application for approval under section 1 of this chapter of the construction or expansion of a confined feeding operation **or CAFO** must be made on a form provided by the department. An applicant must submit the completed application form to the department together with the following:

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

(2) A manure management plan that outlines procedures for the



following:

- (A) Soil testing.
- (B) Manure testing.
- (3) Maps of manure application areas.
- (4) Supplemental information that the department requires, including the following:
  - (A) General features of topography.
  - (B) Soil types.
  - (C) Drainage course.
  - (D) Identification of nearest streams, ditches, and lakes.
  - (E) Location of field tiles.
  - (F) Location of land application areas.
  - (G) Location of manure treatment facilities.
  - (H) Farmstead plan, including the location of water wells on the site.
- (5) A fee of one hundred dollars (\$100). The department shall refund the fee if the department does not make a determination in accordance with the time period established under section 2.1 of this chapter.

**(6) A closure plan.**

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

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

- (1) to the county executive of the county in which the confined feeding operation **or CAFO** is to be located or expanded; and
- (2) to each owner and each occupant of land of which any part of the boundary is one-half (1/2) mile or less from the following:
  - (A) Any part of the proposed footprint of either or both of the following to be located on the land on which the confined feeding operation **or CAFO** is to be located:
    - (i) A livestock or poultry production structure.
    - (ii) A permanent manure storage facility.
  - (B) Any part of the proposed footprint of either or both of the following to be located on the land on which the confined feeding operation **or CAFO** is to be expanded:
    - (i) A livestock or poultry production structure.
    - (ii) The expanded area of a livestock or poultry production structure.



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

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

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

SECTION 4. IC 13-18-10-2.1, AS AMENDED BY P.L.127-2009, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2015]: Sec. 2.1. (a) The department:

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

(b) If the department fails to make a determination on an application not later than ninety (90) days after the date the department receives the completed application, the applicant may request and receive a refund of an approval application fee paid by the applicant, and the commissioner shall:

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

(c) The commissioner may suspend the processing of an application and the ninety (90) day period described under this section if the department determines within thirty (30) days after the department receives the application that the application is incomplete and has



1 mailed a notice of deficiency to the applicant that specifies the parts of  
2 the application that:

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

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

- 9 (1) this chapter;  
10 (2) rules adopted under this chapter;  
11 (3) the water pollution control laws;  
12 (4) rules adopted under the water pollution control laws; and  
13 (5) policies and statements adopted under IC 13-14-1-11.5  
14 relative to confined feeding operations **or CAFOs**.

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

- 17 (1) A responsible party intentionally misrepresented or concealed  
18 any material fact in either or both of the following:

- 19 (A) An application for approval under section 1 of this  
20 chapter.  
21 (B) A disclosure statement required by section 1.4 of this  
22 chapter.

- 23 (2) An enforcement action was resolved against a responsible  
24 party as described in either or both of the following:

- 25 (A) Section 1.4(c)(5) of this chapter.  
26 (B) Section 1.4(c)(6) of this chapter.

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

- 29 (1) The nature and details of the acts attributed to the responsible  
30 party.  
31 (2) The degree of culpability of the responsible party.  
32 (3) The responsible party's cooperation with the state, federal, or  
33 foreign agencies involved in the investigation of the activities  
34 involved in actions referred to in section 1.4(c)(5) and 1.4(c)(6)  
35 of this chapter.  
36 (4) The responsible party's dissociation from any other persons or  
37 entities convicted in a criminal enforcement action referred to in  
38 section 1.4(c)(5) and 1.4(c)(6) of this chapter.  
39 (5) Prior or subsequent self-policing or internal education  
40 programs established by the responsible party to prevent acts,  
41 omissions, or violations referred to in section 1.4(c)(5) and  
42 1.4(c)(6) of this chapter.



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

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

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

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

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

SECTION 5. IC 13-18-10-2.2, AS AMENDED BY P.L.127-2009, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2015]: Sec. 2.2. (a) If an applicant receives an approval under this chapter and completes construction or expansion, not more than thirty (30) days after the date the applicant completes the construction or expansion the applicant shall execute and send to the department an affidavit that affirms under penalties of perjury that the confined feeding operation **or CAFO**:

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

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

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

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

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

SECTION 6. IC 13-18-10-2.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2015]: Sec. 2.3. A confined feeding operation **or CAFO** must submit a manure management plan





that outlines procedures for soil testing, manure testing, and maps of manure application areas to the department at least one (1) time every five (5) years to maintain valid approval for the confined feeding operation **or CAFO** under this chapter.

SECTION 7. IC 13-18-10-2.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2015]: Sec. 2.6. The department shall establish a compliance and technical assistance program for owners and operators of confined feeding operations **and CAFOs** that may be administered by:

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

SECTION 8. IC 13-18-10-4, AS AMENDED BY P.L.127-2009, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. (a) The board may adopt rules under IC 4-22-2 and IC 13-14-9 and the department may adopt policies or statements under IC 13-14-1-11.5 that are necessary for the proper administration of this chapter.

(b) The rules, policies, or statements **adopted under subsection (a):**

(1) may concern construction, expansion, and operation of confined feeding operations **and, after December 31, 2014, CAFOs; and**

(2) may include uniform standards for:

(+) (A) construction, expansion, and manure containment that are appropriate for a specific site; and

(-) (B) manure application and handling that are consistent with best management practices:

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

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

(+) (c) Standards adopted in a rule, policy, or statement under subsection (a) must:

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

(A) the United States Department of Agriculture;

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

(C) the Midwest Plan Service; and

(D) postsecondary educational institution extension bulletins; and

(2) be developed through technical review by the department,



1 postsecondary educational institution specialists, and other animal  
2 industry specialists.

3 **(d) The board shall:**

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

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

12 **The rules adopted under this subsection must become effective not**  
13 **later than January 1, 2015.**

