

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 2017 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 362

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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 8-1-1.9 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]:

**Chapter 1.9. Regulation of New Water and Wastewater Utilities**

**Sec. 1. As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.**

**Sec. 2. As used in this chapter, "public utility" has the meaning set forth in IC 8-1-2-1(a).**

**Sec. 3. As used in this chapter, "water or wastewater utility" means a public utility that provides water service, wastewater service, or both water service and wastewater service to the public.**

**Sec. 4. (a) Notwithstanding IC 8-1-2.7 and any other law under which a water or wastewater utility is exempt from or may withdraw from the jurisdiction of the commission, a water or wastewater utility that is organized as a legal entity after June 30, 2018, is subject to the jurisdiction of the commission with respect to:**

- (1) rates and charges;**
- (2) stocks, bonds, notes, or other evidence of indebtedness;**
- (3) rules; and**
- (4) the annual report filing requirement;**

**for the period of ten (10) years beginning on the day on which the**

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water or wastewater utility is organized as a legal entity.

**(b) This section does not affect:**

- (1) any statutes requiring or permitting a water or wastewater utility to petition the commission before providing service to the public; or**
- (2) the commission's jurisdiction regarding statutes and petitions referred to in subdivision (1).**

SECTION 2. IC 13-11-2-258, AS AMENDED BY P.L.159-2011, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 258. "Wastewater treatment plant", for purposes of IC 13-18-11, **IC 13-18-26**, and IC 13-20-17.5, and environmental management laws, means the system of treatment works, regulatory devices, equipment, and other facilities and appurtenances installed to treat sewage, industrial wastes, and other wastes delivered by a system of sewers and other related facilities, whether owned or operated by the state, a municipality, or a person, firm, or corporation. The term does not include septic tank disposal systems.

SECTION 3. IC 13-11-2-264 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 264. "Water treatment plant", for purposes of IC 13-18-11, **IC 13-18-26**, and environmental management laws, means that part of the public water system that provides the water or in some way alters the physical, chemical, or bacteriological quality of the water.

SECTION 4. IC 13-18-13-11, AS AMENDED BY P.L.235-2005, SECTION 138, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 11. **(a)** A loan or other financial assistance from the fund must be accompanied by the following:

- (1) All papers and opinions required by the authority.
- (2) Unless otherwise provided by the guidelines of the authority, the following:
  - (A) An approving opinion of nationally recognized bond counsel.
  - (B) A certification and guarantee of signatures.
  - (C) A certification that, as of the date of the loan or other financial assistance:
    - (i) no litigation is pending challenging the validity of or entry into the loan or other financial assistance or any security for the loan or other financial assistance; or
    - (ii) if litigation is pending, the litigation will not have a material adverse effect on the validity of the loan or other financial assistance or any security for the loan or other financial assistance.



(D) If litigation is pending, as an alternative to the certification described in clause (C), an opinion of legal counsel that the litigation will not have a material adverse effect on the validity of the loan or other financial assistance.

**(E) Documentation demonstrating that the participant has the financial, managerial, technical, and legal capability of operating and maintaining its wastewater collection and treatment system.**

**(b) Each participant:**

**(1) to which; or**

**(2) for the benefit of which;**

**a loan would be made or the other financial assistance would be provided under this chapter must demonstrate that it has developed or is in the process of developing an asset management program as defined in the guidelines of the authority.**

SECTION 5. IC 13-18-21-11, AS AMENDED BY P.L.235-2005, SECTION 155, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 11. **(a)** A loan or other financial assistance from the fund must be accompanied by the following:

(1) All papers and opinions required by the authority.

(2) Unless otherwise provided by the guidelines of the authority, the following:

(A) An approving opinion of nationally recognized bond counsel.

(B) A certification and guarantee of signatures.

(C) A certification that, as of the date of the loan or other financial assistance:

(i) no litigation is pending challenging the validity of or entry into the loan or other financial assistance or any security for the loan or other financial assistance; or

(ii) if litigation is pending, the litigation will not have a material adverse effect on the validity of the loan or other financial assistance or any security for the loan or other financial assistance.

(D) If litigation is pending, as an alternative to the certification described in clause (C), an opinion of legal counsel that the litigation will not have a material adverse effect on the validity of the loan or other financial assistance.

**(E) Documentation demonstrating that the participant has the financial, managerial, technical, and legal capability of operating and maintaining its water collection and treatment system.**



**(b) Each participant:**

**(1) to which; or**

**(2) for the benefit of which;**

a loan would be made or the other financial assistance would be provided under this chapter must demonstrate that it has developed or is in the process of developing an asset management program as defined in the guidelines of the authority.

SECTION 6. IC 13-18-26 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]:

**Chapter 26. Permit and Permit Application Conditions for Water and Wastewater Treatment Plants**

**Sec. 1. (a) A permit for the operation of a water treatment plant or a wastewater treatment plant that is:**

**(1) issued; or**

**(2) amended for the purposes of:**

**(A) the inclusion of a newly constructed or newly acquired plant; or**

**(B) the expansion of an existing plant;**

under this article after June 30, 2018, is subject to the requirements set forth in sections 2 through 6 of this chapter.

**(b) This chapter does not apply to the renewal of a permit for the operation of a water treatment plant or wastewater treatment plant.**

**Sec. 2. A permit described in section 1(a) of this chapter may not be issued unless the applicant submits, along with the permit application, a certification that all of the following documents have been prepared and are complete under the requirements of this chapter:**

**(1) A life cycle cost-benefit analysis, as described in section 3 of this chapter.**

**(2) A capital asset management plan, as described in section 4 of this chapter.**

**(3) A cybersecurity plan, as described in section 5 of this chapter.**

**Sec. 3. A life cycle cost-benefit analysis must include a comparison of the alternatives of:**

**(1) meeting the water supply or wastewater service needs of the community or area served or proposed to be served through the operation of the water and wastewater treatment plant, as:**

**(A) owned and operated; or**



- (B) proposed to be owned and operated; according to the terms of the permit application; and
- (2) meeting the water supply or wastewater service needs of the community or area served or proposed to be served through one (1) or more other potential means.

**Sec. 4. A capital asset management plan must include all of the following:**

- (1) A plan to annually review infrastructure needs of the water or wastewater treatment plant.
- (2) A detailed engineering analysis of asset conditions and useful life, to be used to develop an infrastructure inspection, repair, and maintenance plan.
- (3) An analysis of customer rates necessary to support the capital asset management plan, including emergency repairs.
- (4) A certification that the water or wastewater treatment plant has:
  - (A) a certified operator;
  - (B) a corporate officer or system manager; and
  - (C) access to an engineer, either on staff or by contract.

**Sec. 5. A cybersecurity plan must provide for the protection of the water or wastewater treatment plant from unauthorized use, alteration, or destruction of electronic data.**

**Sec. 6. (a) The analysis and plans described in sections 3, 4, and 5 of this chapter must be:**

- (1) complete under the requirements of this chapter at the time an application for a permit described in section 1(a) of this chapter is submitted;
- (2) reviewed and revised at least once every five (5) years, for as long as the permit holder operates the water treatment plant or wastewater treatment plant; and
- (3) made publicly available.

**(b) A certification that the analysis and plans described in sections 3, 4, and 5 of this chapter are complete under the requirements of this chapter must be submitted to the department:**

- (1) under section 2 of this chapter at the time an application for a permit described in section 1(a) of this chapter is submitted; and
- (2) at least once every five (5) years after an application for a permit described in section 1(a) of this chapter is submitted, when the analysis and plans are reviewed and revised under subsection (a)(2).

**(c) A certification submitted to the department under this**



**chapter must be notarized.**

**Sec. 7. Failure to include a notarized certification with an application for a permit described in section 1(a) of this chapter constitutes grounds for denial of the permit application.**



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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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