
HOUSE BILL No. 1074

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-11-2; IC 13-18-10.

Synopsis: Confined feeding operations. Establishes good character disclosure requirements for confined feeding operations and concentrated animal feeding operations (operations). Allows the department of environmental management (IDEM) to review and act on disclosed good character information. Provides that: (1) IDEM approval of operations applies to both original construction and modifications; and (2) the requirement for notice to owners or occupants of neighboring land applies to all operations.

Effective: January 1, 2010.

Cheatham

January 7, 2009, read first time and referred to Committee on Agriculture and Rural Development.

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First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

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HOUSE BILL No. 1074



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 13-11-2-8, AS AMENDED BY P.L.154-2005,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2010]: Sec. 8. (a) "Applicant", for purposes of
4 **IC 13-18-10, refers to a person (as defined in section 158(b) of this**
5 **chapter) that submits an application to the department under**
6 **IC 13-18-10-2.**

7 (a) (b) "Applicant", for purposes of IC 13-19-4, means an
8 individual, a corporation, a limited liability company, a partnership, or
9 a business association that:

10 (1) receives, for commercial purposes, solid or hazardous waste
11 generated offsite for storage, treatment, processing, or disposal;
12 and

13 (2) applies for the issuance, transfer, or major modification of a
14 permit described in IC 13-15-1-3 other than a postclosure permit
15 or an emergency permit.

16 For purposes of this subsection, an application for the issuance of a
17 permit does not include an application for renewal of a permit.



1 **(c)** "Applicant", for purposes of IC 13-20-2, means an
2 individual, a corporation, a limited liability company, a partnership, or
3 a business association that applies for an original permit for the
4 construction or operation of a landfill.

5 **(d)** For purposes of subsection ~~(a)~~, **(b)**, "applicant" does not
6 include an individual, a corporation, a limited liability company, a
7 partnership, or a business association that:

- 8 (1) generates solid or hazardous waste; and
- 9 (2) stores, treats, processes, or disposes of the solid or hazardous
10 waste at a site that is:

11 (A) owned by the individual, corporation, partnership, or
12 business association; and

13 (B) limited to the storage, treatment, processing, or disposal of
14 solid or hazardous waste generated by that individual,
15 corporation, limited liability company, partnership, or business
16 association.

17 SECTION 2. IC 13-11-2-71, AS AMENDED BY P.L.137-2007,
18 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JANUARY 1, 2010]: Sec. 71. "Environmental management laws"
20 refers to the following:

- 21 (1) IC 13-12-2 and IC 13-12-3.
- 22 (2) IC 13-13.
- 23 (3) IC 13-14.
- 24 (4) IC 13-15.
- 25 (5) IC 13-16.
- 26 (6) IC 13-17-3-15, IC 13-17-8-10, IC 13-17-10, and IC 13-17-11.
- 27 (7) **IC 13-18-10**, IC 13-18-12, IC 13-18-13-31, and IC 13-18-15
28 through IC 13-18-20.
- 29 (8) IC 13-19-1, IC 13-19-4, and IC 13-19-5-17.
- 30 (9) IC 13-20-1, IC 13-20-2, IC 13-20-4 through IC 13-20-15,
31 IC 13-20-17.7, IC 13-20-19 through IC 13-20-21, and
32 IC 13-20-22-21.
- 33 (10) IC 13-22.
- 34 (11) IC 13-23.
- 35 (12) IC 13-24.
- 36 (13) IC 13-25-1 through IC 13-25-5.
- 37 (14) IC 13-27-8.
- 38 (15) IC 13-30, except IC 13-30-1.

39 SECTION 3. IC 13-11-2-129.9 IS ADDED TO THE INDIANA
40 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
41 [EFFECTIVE JANUARY 1, 2010]: **Sec. 129.9. "Modification", for**
42 **purposes of IC 13-18-10, refers to an expansion of a confined**

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1 **feeding operation or concentrated animal feeding operation that**
2 **results in either of the following:**

3 **(1) An increase in the confined animal capacity.**

4 **(2) An increase in the liquid manure storage capacity.**

5 SECTION 4. IC 13-11-2-191 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 191. **(a)**
7 **"Responsible party", for purposes of IC 13-18-10, means any of the**
8 **following:**

9 **(1) An applicant referred to in IC 13-18-10-1.5(a)(1).**

10 **(2) A person referred to in IC 13-18-10-1.5(a)(2) or**
11 **IC 13-18-10-1.5(a)(3).**

12 **(3) An officer, a corporation director, or a senior management**
13 **official of any of the following that is an applicant referred to**
14 **in IC 13-18-10-1.5(a)(1) or a person referred to in**
15 **IC 13-18-10-1.5(a)(2) or IC 13-18-10-1.5(a)(3):**

16 **(A) A corporation.**

17 **(B) A partnership.**

18 **(C) A limited liability company.**

19 **(D) A business association.**

20 ~~(a)~~ **(b) "Responsible party", for purposes of IC 13-19-4, means:**

21 (1) an officer, a corporation director, or a senior management
22 official of a corporation, partnership, limited liability company, or
23 business association that is an applicant; or

24 (2) an individual, a corporation, a limited liability company, a
25 partnership, or a business association that owns, directly or
26 indirectly, at least a twenty percent (20%) interest in the
27 applicant.

28 ~~(b)~~ **(c) "Responsible party", for purposes of IC 13-20-6, means:**

29 (1) an officer, a corporation director, or a senior management
30 official of a corporation, partnership, limited liability company, or
31 business association that is an operator; or

32 (2) an individual, a corporation, a limited liability company, a
33 partnership, or a business association that owns, directly or
34 indirectly, at least a twenty percent (20%) interest in the operator.

35 ~~(c)~~ **(d) "Responsible party", for purposes of IC 13-24-2, has the**
36 **meaning set forth in Section 1001 of the federal Oil Pollution Act of**
37 **1990 (33 U.S.C. 2701).**

38 ~~(d)~~ **(e) "Responsible party", for purposes of IC 13-25-6, means a**
39 **person:**

40 (1) who:

41 (A) owns hazardous material that is involved in a hazardous
42 materials emergency; or

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- 1 (B) owns a container or owns or operates a vehicle that
- 2 contains hazardous material that is involved in a hazardous
- 3 materials emergency; and
- 4 (2) who:
- 5 (A) causes; or
- 6 (B) substantially contributes to the cause of;
- 7 the hazardous materials emergency.

8 SECTION 5. IC 13-18-10-1 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 1. (a) **Except as**
 10 **provided in subsection (b)**, a person may not start construction **or**
 11 **modification** of a ~~confined feeding operation~~ **either of the following**
 12 without obtaining the prior approval of the department:

- 13 (1) **A confined feeding operation.**
- 14 (2) **A CAFO.**

15 (b) **Subject to section 1.5 of this chapter**, obtaining an NPDES
 16 permit for a CAFO meets the requirements of subsection ~~(a)~~ **(a)(2)** and
 17 327 IAC 16 to obtain an approval.

18 SECTION 6. IC 13-18-10-1.5 IS ADDED TO THE INDIANA
 19 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 20 [EFFECTIVE JANUARY 1, 2010]: **Sec. 1.5. (a) This section applies**
 21 **to the following:**

22 (1) **An applicant for approval under section 1(a) of this**
 23 **chapter whose application:**

- 24 (A) is:
- 25 (i) **filed with the department; and**
- 26 (ii) **not approved by the department;**
- 27 **before 2010; or**
- 28 (B) **is filed with the department after 2009.**

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

- 31 (A) is:
- 32 (i) **filed with the department; and**
- 33 (ii) **not approved by the department;**
- 34 **before 2010; or**
- 35 (B) **is filed with the department after 2009.**

36 (3) **A person who files a notice of intent under 327 IAC 15 for**
 37 **general NPDES permit coverage for a CAFO whose notice is**
 38 **filed after 2009.**

39 (b) **An applicant referred to in subsection (a)(1) or (a)(2) must**
 40 **include the following in the application:**

- 41 (1) **The disclosure statement or statements referred to in**
 42 **subsection (d).**

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- 1 **(2) Proof of financial assurance referred to in subsection (g).**
- 2 **(c) A person referred to in subsection (a)(3) must include the**
- 3 **disclosure statement or statements referred to in subsection (d) and**
- 4 **proof of financial assurance referred to in subsection (g) in the**
- 5 **notice of intent filed under 327 IAC 15 for general NPDES permit**
- 6 **coverage for the CAFO.**
- 7 **(d) An applicant or person referred to in subsection (b) or (c)**
- 8 **must submit to the department a disclosure statement for each**
- 9 **responsible party that includes the following:**
- 10 **(1) The name and business address of the responsible party.**
- 11 **(2) A description of the responsible party's experience in**
- 12 **managing the type of facility that will be managed under the**
- 13 **permit.**
- 14 **(3) A description of all pending administrative, civil, or**
- 15 **criminal enforcement actions filed against the responsible**
- 16 **party that alleges either of the following:**
- 17 **(A) Acts or omissions that:**
- 18 **(i) constitute a material violation of a state or federal**
- 19 **environmental law or regulation; and**
- 20 **(ii) present a substantial endangerment to human health**
- 21 **or the environment.**
- 22 **(B) Knowing repeated violations of state or federal**
- 23 **environmental laws or regulations that could lead to**
- 24 **environmental harm.**
- 25 **(4) A description of all finally adjudicated or settled**
- 26 **administrative, civil, or criminal enforcement actions resolved**
- 27 **against the responsible party within the five (5) years that**
- 28 **immediately precede the date of the application involving**
- 29 **either of the following:**
- 30 **(A) Acts or omissions that:**
- 31 **(i) constitute a material violation of a state or federal**
- 32 **environmental law or regulation; and**
- 33 **(ii) present a substantial endangerment to human health**
- 34 **or the environment.**
- 35 **(B) Knowing repeated violations of state or federal**
- 36 **environmental laws or regulations that could lead to**
- 37 **environmental harm.**
- 38 **(5) Identification of all state and federal environmental**
- 39 **permits previously denied or revoked.**
- 40 **(e) A disclosure statement submitted under subsection (d):**
- 41 **(1) must be executed under oath or affirmation; and**
- 42 **(2) is subject to the penalty for perjury under IC 35-44-2-1.**

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1 (f) The department may investigate and verify the information
2 set forth in a disclosure statement submitted under subsection (d).

3 (g) A person referred to in subsection (b) or (c) must submit to
4 the department evidence of financial assurance, maintained in
5 accordance with and in amounts established by rules adopted
6 under section 4 of this chapter. The financial assurance must be in
7 the form of:

- 8 (1) a bond for performance, executed by a corporate surety
9 licensed to do business in Indiana;
 - 10 (2) a negotiable certificate of deposit; or
 - 11 (3) a negotiable letter of credit;
- 12 payable to the department and conditional upon faithful
13 performance of the requirements of this chapter and compliance
14 with other environmental laws.

15 SECTION 7. IC 13-18-10-2 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 2. (a) Application
17 for approval of the construction **or modification** of a confined feeding
18 operation **or a CAFO** must be made on a form provided by the
19 department. An applicant must submit the completed application form
20 to the department together with the following:

- 21 (1) Plans and specifications for the design and operation of
22 manure treatment and control facilities.
- 23 (2) A manure management plan that outlines procedures for the
24 following:
 - 25 (A) Soil testing.
 - 26 (B) Manure testing.
- 27 (3) Maps of manure application areas.
- 28 (4) Supplemental information that the department requires,
29 including the following:
 - 30 (A) General features of topography.
 - 31 (B) Soil types.
 - 32 (C) Drainage course.
 - 33 (D) Identification of nearest streams, ditches, and lakes.
 - 34 (E) Location of field tiles.
 - 35 (F) Location of land application areas.
 - 36 (G) Location of manure treatment facilities.
 - 37 (H) Farmstead plan, including the location of water wells on
38 the site.
- 39 (5) A fee of one hundred dollars (\$100). The department shall
40 refund the fee if the department does not make a determination in
41 accordance with the time period established under section 2.1 of
42 this chapter.

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1 **(6) The disclosure statement or statements and the proof of**
 2 **financial assurance required under section 1.5 of this chapter.**

3 (b) An applicant who applies for approval to construct a confined
 4 feeding operation **or a CAFO** on land that is undeveloped or for which
 5 a valid existing approval has not been issued, **or to modify a confined**
 6 **feeding operation or a CAFO**, shall make a reasonable effort to
 7 provide notice:

8 (1) to:

9 (A) each person who owns land that adjoins the land on which
 10 the confined feeding operation **or the CAFO** is to be located
 11 **or modified**; or

12 (B) if a person who owns land that adjoins the land on which
 13 the confined feeding operation **or the CAFO** is to be located
 14 **or modified** does not occupy the land, all occupants of the
 15 land; and

16 (2) to the county executive of the county in which the confined
 17 feeding operation **or the CAFO** is to be located **or modified**;
 18 not more than ten (10) working days after submitting an application.
 19 The notice must be sent by mail, be in writing, include the date on
 20 which the application was submitted to the department, and include a
 21 brief description of the subject of the application. The applicant shall
 22 pay the cost of complying with this subsection. The applicant shall
 23 submit an affidavit to the department that certifies that the applicant
 24 has complied with this subsection.

25 **(c) A person must comply with subsection (d) if:**

26 **(1) as provided in section 1(b) of this chapter, the person is not**
 27 **required to file an application for construction of a CAFO:**

28 **(A) on land that is undeveloped; or**

29 **(B) for which:**

30 **(i) a valid existing approval has not been issued; or**

31 **(ii) an NPDES permit has not been obtained;**

32 **or for modification of a CAFO; and**

33 **(2) the person files:**

34 **(A) an application under 327 IAC 5 for an individual**
 35 **NPDES permit for the construction or modification of a**
 36 **CAFO; or**

37 **(B) a notice of intent under 327 IAC 15 for general NPDES**
 38 **permit coverage for construction or modification of a**
 39 **CAFO.**

40 **(d) A person referred to in subsection (c) shall make a**
 41 **reasonable effort to provide notice:**

42 (1) to:

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1 (A) each person who owns land that adjoins the land on
 2 which the CAFO is to be located or modified; or
 3 (B) if a person who owns land that adjoins the land on
 4 which the CAFO is to be located or modified does not
 5 occupy the land, all occupants of the land; and
 6 (2) to the county executive of the county in which the CAFO
 7 is to be located or modified;
 8 not more than ten (10) working days after submitting an
 9 application or filing a notice of intent. The notice must be sent by
 10 mail, be in writing, include the date on which the application or
 11 notice of intent was submitted to or filed with the department, and
 12 include a brief description of the subject of the application or
 13 notice of intent. The person shall pay the cost of complying with
 14 this subsection. The person shall submit an affidavit to the
 15 department that certifies that the person has complied with this
 16 subsection.

17 (e) Plans and specifications for manure treatment or control
 18 facilities for a confined feeding operation or a CAFO must secure the
 19 approval of the department. The department shall approve the
 20 construction and operation of the manure management system of the
 21 confined feeding operation or the CAFO if the commissioner
 22 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 or CAFOs.

29 SECTION 8. IC 13-18-10-2.1 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 2.1. (a) The
 31 department:

- 32 (1) shall make a determination on an application not later than
 33 ninety (90) days after the date the department receives the
 34 completed application, including all required supplemental
 35 information, unless the department and the applicant agree to a
 36 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 **either of**
9 **the following applies:**

10 (1) The department:

11 (A) determines within thirty (30) days after the department
12 receives the application that the application is incomplete; and

13 (B) has mailed a notice of deficiency to the applicant that
14 specifies the parts of the application that:

15 ~~(1)~~ (i) do not contain adequate information for the
16 department to process the application; or

17 ~~(2)~~ (ii) are not consistent with applicable law.

18 (2) The department:

19 (A) determines that the applicant is subject to any pending
20 action as described in section 1.5(d)(3) of this chapter; and

21 (B) is diligently pursuing the pending action under
22 IC 13-30.

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

26 (1) this chapter;

27 (2) rules adopted under this chapter;

28 (3) the water pollution control laws;

29 (4) rules adopted under the water pollution control laws; and

30 (5) policies and statements adopted under IC 13-14-1-11.5
31 relative to confined feeding operations **or CAFOs**.

32 (e) **Subject to subsection (f), the commissioner may deny an**
33 **application upon making either of the following findings:**

34 (1) **A responsible party intentionally misrepresented or**
35 **concealed any material fact in:**

36 (A) **a disclosure statement; or**

37 (B) **other information;**

38 **required by section 1.5 of this chapter.**

39 (2) **An enforcement action was resolved against a responsible**
40 **party as described in section 1.5(d)(4) of this chapter.**

41 (f) **The commissioner may not deny an application under this**
42 **section based solely on pending actions disclosed under section**

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1.5(d)(3) of this chapter.

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

(1) The nature and details of the acts attributed to the applicant or responsible party.

(2) The degree of culpability of the responsible party.

(3) The responsible party's cooperation with the state or federal agencies involved in the investigation of the activities involved in actions referred to in section 1.5(d)(4) of this chapter.

(4) The responsible party's dissociation from any other persons or entities convicted in a criminal enforcement action referred to in section 1.5(d)(4) of this chapter.

(5) Prior or subsequent self-policing or internal education programs established by the responsible party to prevent acts, omissions, or violations referred to in section 1.5(d)(4) of this chapter.

(6) Whether the best interests of the public will be served by denial of the permit.

(7) Any demonstration of good citizenship by the person or responsible party.

(h) Except as provided in subsection (i), 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.

(i) 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 (g) influenced the denial.

(j) The department may amend an approval of an application or revoke an approval of an application:

(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 9. IC 13-18-10-2.2 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 2.2. (a) If an
2 applicant receives an approval under this chapter and completes
3 construction, not more than thirty (30) days after the date the applicant
4 completes the construction the applicant shall execute and send to the
5 department an affidavit that affirms under penalties of perjury that the
6 confined feeding operation **or CAFO**:

- 7 (1) was constructed; and
 - 8 (2) will be operated;
- 9 in accordance with the requirements of the department's approval.

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

- 12 (1) begin not later than two (2) years; and
 - 13 (2) be completed not later than four (4) years;
- 14 after the date the department approves the construction of the confined
15 feeding operation **or CAFO** or the date all appeals brought under
16 IC 4-21.5 concerning the construction of the confined feeding
17 operation **or CAFO** have been completed, whichever is later.

18 SECTION 10. IC 13-18-10-2.6 IS AMENDED TO READ AS
19 FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 2.6. The
20 department shall establish a compliance and technical assistance
21 program for owners and operators of confined feeding operations **and**
22 **CAFOs** that may be administered by:

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

26 SECTION 11. IC 13-18-10-4, AS AMENDED BY P.L.2-2007,
27 SECTION 167, IS AMENDED TO READ AS FOLLOWS
28 [EFFECTIVE JANUARY 1, 2010]: Sec. 4. (a) **Subject to subsection**
29 **(c)**, the board may adopt rules under IC 4-22-2 and IC 13-14-9 and the
30 department may adopt policies or statements under IC 13-14-1-11.5
31 that are necessary for the proper administration of this chapter. The
32 rules, policies, or statements may concern construction and operation
33 of confined feeding operations **and CAFOs** and may include uniform
34 standards for:

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

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1 subsection (a) must:
 2 (1) consider confined feeding standards that are consistent with
 3 standards found in publications from:
 4 (A) the United States Department of Agriculture;
 5 (B) the Natural Resources Conservation Service of the United
 6 States Department of Agriculture;
 7 (C) the Midwest Plan Service; and
 8 (D) postsecondary educational institution extension bulletins;
 9 and
 10 (2) be developed through technical review by the department,
 11 postsecondary educational institution specialists, and other animal
 12 industry specialists.
 13 **(c) The board shall:**
 14 **(1) adopt rules under IC 4-22-2 and IC 13-14-9 to set the**
 15 **amount of financial assurance required of a person under**
 16 **section 1.5(g) of this chapter; and**
 17 **(2) set graduated amounts under subdivision (1) for categories**
 18 **of operations determined by the board based on the animal**
 19 **capacity of the operations taking into consideration the**
 20 **greater potential liability associated with larger operations.**

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