



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB1352

Introduced 2/13/2019, by Sen. Laura Fine

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/5.891 new

Creates the Wetlands Protection Act. Provides provisions concerning: exemptions; wetlands delineation, classification, notification, and permits; surety; general permits; appeal of final decisions made by the Department of Natural Resources and judicial review; investigation and enforcement; and county authority. Creates the Wetlands Advisory Committee and establishes duties and rules for the Committee. Creates the Wetlands Protection Fund. Defines terms. Makes conforming changes in the State Finance Act. Effective immediately.

LRB101 00251 LNS 45255 b

1 AN ACT concerning wetlands.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Wetlands Protection Act.

6 Section 5. Scope. This Act does not apply to property
7 within a municipality with a population greater than 500,000,
8 nor to property within the incorporated or unincorporated area
9 of a county with a population greater than 3,000,000.

10 Section 10. Definitions. For the purposes of this Act:

11 "ADID" means those aquatic sites identified by the United
12 States Environmental Protection Agency and the United States
13 Army Corps of Engineers as areas generally unsuitable for
14 disposal of dredged or fill material in accordance with 40
15 C.F.R. Part 230.80.

16 "Affected property" means any property upon which a
17 regulated activity is conducted.

18 "Agency" means the Illinois Environmental Protection
19 Agency.

20 "Agricultural land" means land that is currently used for
21 normal farming or ranching activities.

22 "Avoidance" means any action taken in a manner such that a

1 regulated activity will not occur.

2 "Bog" means a peat-accumulating wetland that has no
3 significant inflows or outflows and supports acidophilic
4 mosses, particularly sphagnum, resulting in highly acidic
5 conditions.

6 "Commencing such a regulated activity" means any steps
7 taken in preparation of conducting a regulated activity that
8 may impact the affected property, including, but not limited
9 to, cutting, filling, pumping of water, or earth movement.

10 "Committee" means the Wetlands Advisory Committee.

11 "Contiguous wetland" means a wetland that is delineated on
12 the affected property and extends beyond the boundary of that
13 property.

14 "Converted wetland" means a wetland that has been drained,
15 dredged, filled, leveled, or otherwise manipulated, including
16 the removal of woody vegetation or any activity that results in
17 impairing or reducing the flow and circulation of water, for
18 the purpose of or with the effect of making possible the
19 production of an agricultural commodity without further
20 application of the manipulations described herein if: (i) such
21 production would not have been possible but for such action;
22 and (ii) before such action such land was wetland, farmed
23 wetland, or farmed-wetland pasture and was neither highly
24 erodible land nor highly erodible cropland.

25 "Corps of Engineers" or "COE" means the United States Army
26 Corps of Engineers.

1 "Cypress swamp" means forested, permanent or
2 semi-permanent bodies of water, with species assemblages
3 characteristic of the Gulf and Southeastern Coastal Plains,
4 including, but not limited to, tupelo and bald cypress, which
5 are restricted to extreme southern Illinois.

6 "Department" means the Illinois Department of Natural
7 Resources.

8 "Director" means the Director of Natural Resources.

9 "Fen" means a wetland fed by an alkaline water source such
10 as a calcareous spring or seep.

11 "Floristic quality index" means an index calculated using
12 the Floristic Quality Assessment Method of assessing floristic
13 integrity or quality by summing the numerical quality ratings
14 of all plant species present then dividing the total by the
15 number of native species present (mean coefficient of
16 conservatism) or by the square root of the number of native
17 species (floristic quality index).

18 "Incidentally created" means created as a result of any
19 normal or routine activity coincidental with the conduct of
20 legitimate business enterprises. "Incidentally created" does
21 not mean a wetland or depression created as mitigation for any
22 activity affecting wetlands.

23 "Incidental fallback" means the redeposit of small volumes
24 of dredged material that is incidental to excavation activity
25 in waters of the State when such material falls back to
26 substantially the same place as the initial removal.

1 "Isolated wetlands" means those areas that are inundated or
2 saturated by surface or ground water at a frequency or duration
3 sufficient to support, and that under normal circumstances do
4 support, a prevalence of vegetation typically adapted for life
5 in saturated soil conditions, and that are not regulated under
6 the federal Clean Water Act.

7 "Panne" means wet interdunal flats located near Lake
8 Michigan.

9 "Person" means an individual, partnership, co-partnership,
10 firm, company, limited liability company, corporation,
11 association, joint stock company, trust, estate, political
12 subdivision, State agency, or other legal entity, or its legal
13 representative, agent, or assigns.

14 "Prior converted cropland" means a converted wetland where
15 the conversion occurred prior to December 23, 1985, an
16 agricultural commodity has been produced at least once before
17 December 23, 1985, and as of December 23, 1985, the converted
18 wetland did not support woody vegetation and met the following
19 hydrologic criteria: (i) inundation was less than 15
20 consecutive days during the growing season or 10% of the
21 growing season, whichever is less, in most years (50% chance or
22 more); and (ii) if a pothole, ponding was less than 7
23 consecutive days during the growing season in most years (50%
24 chance or more) and saturation was less than 14 consecutive
25 days during the growing season most years (50% chance or more).

26 "Regulated activity" means the discharge of dredged or fill

1 material into a wetland, the drainage of a wetland, or
2 excavation of a wetland that results in more than incidental
3 fallback.

4 "Threatened or endangered species" means those species
5 that have been designated as threatened or endangered by the
6 Illinois Endangered Species Protection Board pursuant to the
7 Illinois Endangered Species Protection Act and those species
8 that have been designated as threatened or endangered by the
9 U.S. Fish and Wildlife Service pursuant to the Endangered
10 Species Act.

11 "Upland" means non-wetland, when used to describe a
12 particular land use, or non-hydric, when used to describe a
13 soil type.

14 "Wetlands" means those areas that are inundated or
15 saturated by surface or ground water at a frequency or duration
16 sufficient to support, and that under normal circumstances do
17 support, a prevalence of vegetation typically adapted for life
18 in saturated soil conditions.

19 Section 20. Exemptions.

20 (a) As long as they do not have as their purpose bringing a
21 wetland into a use to which it was not previously subject, the
22 following are not prohibited by or otherwise subject to
23 regulation under this Act:

24 (1) Normal farming, silviculture, and ranching
25 activities including plowing, seeding, cultivating, minor

1 drainage, harvesting for the production of food, fiber, and
2 forest products, or upland soil and water conservation
3 practices.

4 (2) Maintenance, including emergency reconstruction of
5 recently damaged parts, of currently serviceable
6 structures including dikes, dams, levees, groins, riprap,
7 breakwaters, causeways, and bridge abutments or
8 approaches, and transportation structures.

9 (3) Construction or maintenance of farm or stock ponds
10 or irrigation canals or ditches, or the maintenance of
11 drainage ditches.

12 (4) Construction of temporary sedimentation basins on
13 a construction site that does not include any regulated
14 activities within a wetland.

15 (5) Construction or maintenance of farm roads or forest
16 roads, or temporary roads for moving mining equipment,
17 where such roads are constructed and maintained, in
18 accordance with best management practices, to assure that
19 flow and circulation patterns and chemical and biological
20 characteristics of the wetland are not impaired, that the
21 reach of the wetland is not reduced, and that any adverse
22 effect on the aquatic environment will be otherwise
23 minimized.

24 (6) Except for Class IA and Class IB wetlands,
25 activities for the placement of pilings for linear
26 projects, including bridges, elevated walkways, and power

1 line structures in accordance with best management
2 practices, to assure that the flow and circulation patterns
3 and chemical and biological characteristics of the wetland
4 are not impaired, that the reach of the wetland is not
5 reduced, and that any adverse effect on the aquatic
6 environment will be otherwise minimized.

7 (7) Installation and maintenance of signs, lighting,
8 and fences and the mowing of vegetation within existing
9 maintained rights-of-way.

10 (8) Repair and maintenance of existing buildings,
11 facilities, lawns, and ornamental plantings.

12 (9) Construction projects that have obtained any
13 necessary building permits from applicable local
14 jurisdictions prior to the effective date of this Act.

15 (10) Application of media, including deicing media, on
16 the surface of existing roads for purposes of public
17 safety.

18 (11) Non-surface disturbing surveys and investigations
19 for construction, planning, maintenance, or location of
20 environmental resources.

21 (12) Wetland management practices on lands that are
22 used primarily for the management of waterfowl, other
23 migratory water birds, or furbearers if such practices took
24 place on these lands prior to the effective date of this
25 Act including vegetation management that may include the
26 use of fire, chemical, or mechanical (hydro-axe,

1 bulldozer, rome disk, or similar equipment) removal of
2 invading woody or herbaceous vegetation to maintain a
3 preferred successional stage. Use of chemicals must be by a
4 certified applicator and appropriate to their registered
5 uses. Clearing or removal of woody vegetation shall be
6 limited to 4-inch diameter at breast height or smaller
7 material for the purpose of establishing or maintaining the
8 successional stage of a wetland as an herbaceous wetland
9 vegetated by native moist soil plants or selected wildlife
10 food plants.

11 (b) Any exemption authorized by and pertaining to wetlands
12 that are subject to regulation under the federal Clean Water
13 Act, or regulations promulgated thereunder, shall also be an
14 exemption for the purpose of this Act.

15 (c) The following are not isolated wetlands for purposes of
16 this Act:

17 (1) Waste treatment systems, including treatment ponds
18 or lagoons, designed to comply with water quality standards
19 of the State or to remediate a site in accordance with an
20 approved Agency program, and former waste treatment
21 systems that have ceased operation less than 33 years prior
22 to commencement of the proposed activity or which are
23 undergoing remediation in accordance with an approved
24 Agency program.

25 (2) A drainage or irrigation ditch.

26 (3) An artificially irrigated area that would revert to

1 upland if the irrigation ceased.

2 (4) An artificial lake or pond created by excavating or
3 diking upland to collect and retain water for the primary
4 purpose of stock watering, irrigation, wildlife, fire
5 control, ornamentation or landscaping, or as a settling
6 pond.

7 (5) Except for isolated wetlands created pursuant to
8 mining activities regulated in accordance with paragraph
9 (7), an incidentally created water-filled depression,
10 unless: (i) ownership of the property containing the
11 depression has been transferred away from the party who
12 incidentally created the water-filled depression; (ii)
13 that ownership transfer occurred more than 12 months prior
14 to the commencement of an otherwise regulated activity;
15 (iii) the use of the property has changed from the use that
16 existed when the property was transferred from the party
17 who incidentally created the water-filled depression; and
18 (iv) the resulting body of water meets the definition in
19 this Act of an isolated wetland, or if the ownership of the
20 property has not been transferred from the party who
21 created the incidentally created water-filled depression,
22 the depression was not created more than 33 years before
23 the date the application is received by the Department.

24 (6) Stormwater or spill management systems, including
25 retention and detention basins, ditches and channels, and
26 former stormwater or spill management systems that have

1 ceased operation less than 33 years prior to commencement
2 of the proposed activity or which are undergoing
3 remediation in accordance with an approved Agency program.

4 (7) Waters that undergo mining activities conducted
5 pursuant to a federal, State, regional, or local permit
6 that requires the reclamation of the affected wetlands if
7 the reclamation will be completed within a reasonable
8 period of time after completion of activities at the site
9 and, upon completion of such reclamation, the wetlands will
10 support functions generally equivalent to the functions
11 supported by the wetlands at the time of commencement of
12 such activities.

13 (8) Prior converted cropland.

14 (d) Any activity covered by the Interagency Wetland Policy
15 Act of 1989 is exempt from all of the provisions of this Act.

16 Section 25. Applicability. Through June 30, 2022, the
17 requirements of this Act apply to all isolated wetlands as that
18 term is defined in this Act. If an isolated wetland ceases to
19 meet that definition because it becomes subject to regulation
20 under the federal Clean Water Act, such wetland shall no longer
21 be subject to the provisions of this Act.

22 Beginning July 1, 2022, the requirements of this Act apply
23 to all wetlands as that term is defined in this Act, unless a
24 COE permit is required; provided, however, that if an exemption
25 under Section 20 applies, that exemption shall continue in

1 effect after July 1, 2022.

2 The Department on behalf of the State may enter into
3 written delegation agreements with the Corps of Engineers under
4 which it may assume all or portions of the authority of the
5 Corps of Engineers under the federal Clean Water Act. Such
6 delegation agreements shall provide, at a minimum, that all
7 delineation, classification, notification, and permitting
8 requirements shall be at least as stringent as those contained
9 in this Act.

10 Section 30. Wetlands delineation, classification,
11 notification, permits. The requirements of this Section apply
12 upon the adoption of rules under subsection (c) of Section 45,
13 or 270 days from the effective date of this Act, whichever
14 occurs first.

15 (a) The procedures and regulatory criteria for the
16 delineation, classification, notification, and permitting for
17 wetlands shall be conducted in accordance with the provisions
18 of this Section.

19 (b) Any person who intends to conduct a regulated activity
20 within the State may request a determination from the
21 Department as to the existence, location, and surface area of
22 any wetlands on or contiguous to the affected property. Nothing
23 in this Section shall require the person to seek such a
24 determination; however, failure to seek and obtain a
25 determination shall not be a defense against a violation of

1 this Act.

2 The person seeking a determination shall provide the
3 Department with sufficient information to render such a
4 determination. Such information shall include a wetland
5 delineation made in accordance with the Corps of Engineers
6 Wetlands Delineation Manual, Wetlands Research Program
7 Technical Report Y-87-1, and any applicable Regional
8 Supplements thereto. Delineation of the portion of a contiguous
9 wetland not on the affected property shall be made to the
10 extent reasonably possible, and methods other than physical
11 onsite evaluations shall be considered by the Department.

12 The Department shall provide notice to the person seeking a
13 determination as to whether a submitted determination request
14 is complete. Unless the Department notifies the person seeking
15 a determination that the determination request is incomplete
16 within 15 days of receipt of the determination request, the
17 determination request shall be deemed complete. The Department
18 may request additional information as needed to make the
19 completeness determination.

20 The Department shall, upon receipt of a complete
21 determination request, provide the person, within 30 days, with
22 a determination as to the existence, location, and surface area
23 of wetlands located on or contiguous to the affected property.

24 If the Department determines that there are no wetlands on
25 the affected property, any otherwise regulated activity
26 conducted on the property shall not be subject to the

1 provisions of this Act.

2 If the Department determines that there is one or more
3 wetlands on or contiguous to the affected property, the person
4 may apply to the Department for classification of such
5 wetlands.

6 Any determination of a wetland by the Department is a final
7 decision for purposes of appeal under Section 50.

8 (c) If any person intends to conduct a regulated activity,
9 such person may, prior to commencing such a regulated activity,
10 request that the wetland be classified as Class IA, IB, II, or
11 III in accordance with the provisions of this Section. Nothing
12 in this Section shall require the person to seek such a
13 classification; however, any wetlands not so classified shall
14 be considered Class IA for the purposes of this Act.

15 The person seeking a classification shall provide the
16 Department with sufficient information to render such a
17 classification. Such information shall include a wetland
18 delineation made in accordance with the Corps of Engineers
19 Wetlands Delineation Manual, Wetlands Research Program
20 Technical Report Y-87-1, and any applicable Regional
21 Supplements thereto.

22 Unless the Department notifies the person seeking a
23 classification that the classification request is incomplete
24 within 15 days of receipt of the classification request, the
25 classification request shall be deemed complete. The
26 Department may request additional information as needed to make

1 the completeness determination. The Department shall, upon
2 receipt of a complete classification request, provide the
3 person seeking a classification, within 30 days, with a
4 classification of wetlands located on or contiguous to the
5 affected property. If the Department fails to provide the
6 person seeking a classification with a classification within 30
7 days, the classification requested by the person shall be
8 deemed granted.

9 Wetlands shall be classified as follows:

10 (1) The Department shall classify a wetland as a Class
11 IA Wetland if:

12 (A) the wetland is or encompasses a bog;

13 (B) the wetland is or encompasses a fen;

14 (C) the wetland is or encompasses a panne;

15 (D) the wetland is or encompasses a cypress swamp;

16 (E) the wetland is or encompasses a Category I
17 Illinois Natural Areas Inventory Site as identified by
18 the Department in its Natural Heritage Database,
19 provided that the Department shall disclose within 5
20 working days of a request from an applicant, a
21 prospective applicant, or a qualified professional on
22 behalf of an applicant or a prospective applicant
23 whether a site identified by latitude and longitude
24 includes a Category I Illinois Natural Areas Inventory
25 Site; or

26 (F) a threatened or endangered species has been

1 identified in the wetland.

2 (2) The Department shall classify a wetland as a Class
3 IB Wetland if the wetland:

4 (A) is or encompasses an ADID site;

5 (B) is or encompasses a Category VI Illinois
6 Natural Area Inventory Site as identified by the
7 Department in its Natural Heritage Database or
8 regional equivalent; provided that the Department
9 shall disclose within 5 working days of a request from
10 an applicant, a prospective applicant, or a qualified
11 professional on behalf of an applicant or a prospective
12 applicant whether a site identified by latitude and
13 longitude includes a Category VI Illinois Natural
14 Areas Inventory Site; or

15 (C) has a Floristic Quality Index (FQI) which is
16 equal to or greater than 20 or a mean coefficient of
17 conservatism (Mean C) equal to or greater than 3.5,
18 determined in accordance with rules adopted by the
19 Department.

20 (3) The Department shall classify a wetland as a Class
21 II Wetland if the wetland is not a Class IA, Class IB, or
22 Class III wetland.

23 (4) The Department shall classify a wetland as a Class
24 III Wetland if:

25 (A) the wetland is not a Class IA or Class IB
26 wetland; and

1 (B) the total size of the wetland, including
2 contiguous areas, is

3 (i) less than 0.25 acre; or

4 (ii) less than 0.5 acre if the wetland is in a
5 county that does not have authority to establish a
6 stormwater management program under Section 5-1062
7 of the Counties Code and the wetland is in
8 agricultural land.

9 (d) Subject to the provisions of Section 40 regarding
10 general permits, no person may conduct or cause to be conducted
11 a regulated activity within or affecting a wetland in such a
12 manner that the biological or hydrological integrity of the
13 wetland is impaired within the scope of this Act, except in
14 accordance with the terms of an individual permit issued by the
15 Department or authorization to proceed as applicable under this
16 Section.

17 (1) Class IA Wetlands:

18 (A) A permit to conduct a regulated activity
19 affecting a Class IA wetland within the scope of this
20 Act shall be granted if documentation is submitted that
21 demonstrates that complete avoidance of impacts to the
22 Class IA wetland precludes all economic use of the
23 entire parcel and that no practicable alternative to
24 wetland modification exists.

25 Based upon a review of the submitted documentation
26 and any other available resources, the Department

1 shall make a determination as to whether the proposed
2 modification represents the least amount of wetland
3 impact required to restore an economic use to the
4 upland portion of the parcel.

5 Wetland losses shall be mitigated at a ratio of
6 4.5:1 and shall be mitigated in kind and within the
7 same watershed as the impacted area restoring, to the
8 maximum degree practicable as determined by the
9 Department, both the type and functions of the wetland
10 that will be affected by the regulatory activity.

11 The Director, for good cause shown and on a
12 case-by-case basis, may authorize an upward or
13 downward departure from the mitigation ratio otherwise
14 required under this paragraph (1), but for a Class IA
15 wetland the Director shall require a mitigation ratio
16 of at least 4:1 and shall not require a mitigation
17 ratio greater than 5:1.

18 (B) No permit under this paragraph (1) may be
19 issued by the Department without a public notice and a
20 public hearing.

21 (2) Class IB Wetlands:

22 (A) A permit to conduct a regulated activity
23 affecting a Class IB wetland within the scope of this
24 Act shall be granted if documentation is submitted that
25 demonstrates that no practicable alternative to
26 wetland modification exists.

1 Based upon a review of the submitted documentation
2 and any other available resources, the Department
3 shall make a determination as to whether the proposed
4 modification constitutes the least amount of wetland
5 impact practicable and whether a permit should be
6 granted.

7 Wetland losses shall be mitigated at a ratio of 3:1
8 and shall be mitigated in kind and within the same
9 watershed as the impacted area, restoring both the type
10 and functions of the wetlands that will be affected by
11 the regulated activity.

12 The Director, for good cause shown and on a
13 case-by-case basis, may authorize an upward or
14 downward departure from the mitigation ratio otherwise
15 required under this paragraph (2), but for a Class IB
16 wetland the Director shall require a mitigation ratio
17 of at least 2.5:1 and shall not require a mitigation
18 ratio greater than 3.5:1.

19 (B) No permit under this paragraph (2) may be
20 issued by the Department without a public notice and
21 opportunity for public hearing being afforded. The
22 Department shall hold a public hearing concerning a
23 permit application if the proposed activity may have a
24 significant impact upon wetland resources or if the
25 Department determines that a public hearing is
26 otherwise appropriate.

1 (3) Class II Wetlands:

2 (A) A permit to conduct a regulated activity
3 affecting a Class II wetland within the scope of this
4 Act shall be granted if documentation is submitted
5 demonstrating that no reasonable alternative to
6 wetland modification exists.

7 Based upon a review of the submitted documentation
8 and any other available resources, the Department
9 shall make a determination as to whether the proposed
10 modification constitutes the least amount of wetland
11 impact practicable and whether a permit should be
12 granted.

13 Wetland losses shall be mitigated at a ratio of
14 1.5:1 and shall be mitigated in kind and within the
15 same watershed as the impacted area, restoring both the
16 type and functions of the wetland that will be affected
17 by the regulated activity.

18 (B) No permit under this paragraph (3) may be
19 issued by the Department without a public notice and
20 opportunity for public hearing being afforded. The
21 Department shall hold a public hearing concerning a
22 permit application if the proposed activity may have a
23 significant impact upon wetland resources or if the
24 Department determines that a public hearing is
25 otherwise appropriate.

26 (4) Class III Wetlands:

1 (A) No regulated activity covered under this Act
2 that will impact an area that has been classified as a
3 Class III wetland may be undertaken without prior
4 notification to the Department.

5 (B) Such notification shall include: (i) a sketch
6 that reasonably depicts the area that will be affected
7 by the regulated activity, including wetland and water
8 boundaries for the areas affected and the existing land
9 uses and structures; (ii) a description of the proposed
10 activity, including its purpose; (iii) a description
11 of any public benefit to be derived from the proposed
12 project; and (iv) the names and addresses of adjacent
13 landowners as determined by the current tax assessment
14 rolls.

15 (C) Upon receipt of a notification of intent, the
16 Department shall verify that the regulated activity
17 will affect a wetland that it previously classified as
18 Class III.

19 If the Department so verifies, the Department
20 shall send the person, within 30 days of the receipt of
21 such notification, a response stating that the
22 regulated activity may proceed.

23 If the Department cannot so verify, the Department
24 shall send the person, within 30 days of the receipt of
25 such notification, a response stating that no
26 classification has been made by the Department, or that

1 a Classification of IA, IB, or II was made and that the
2 regulated activity may not proceed until either a
3 classification is made pursuant to this Section, or a
4 permit is obtained, as applicable.

5 Failure of the Department to respond to a
6 notification shall be deemed an authorization to
7 proceed.

8 (D) No permit shall be required for a regulated
9 activity covered under this Act that will impact an
10 area that has been classified as a Class III wetland.

11 (e) Within 15 days of the receipt of a permit application,
12 the Department shall determine if an application is complete.
13 To be deemed complete, an application must provide all
14 information, as requested in Department application forms,
15 sufficient to evaluate the application. Such information shall
16 include, at a minimum: (i) a map of the area that will be
17 affected by the activity, including wetland and water
18 boundaries for the areas affected and the existing uses and
19 structures; (ii) a wetland delineation made in accordance with
20 the Corps of Engineers Wetlands Delineation Manual, Wetlands
21 Research Program Technical Report Y-87-1, and any applicable
22 Regional Supplements thereto; (iii) a description of the
23 proposed activity, including its purpose, the location and
24 dimensions of any structures, grading or fills, drainage,
25 roads, sewers and water supply, parking lots, stormwater
26 facilities, discharge of pollutants, and onsite waste

1 disposal; (iv) a description of any public benefit to be
2 derived from the proposed project; and (v) the names and
3 addresses of adjacent landowners as determined by the current
4 tax assessment rolls. The Department's application forms shall
5 be finalized and made available prior to the date on which any
6 application is required. The Department shall provide notice to
7 the applicant as to whether a submitted application is
8 complete. Unless the Department notifies the applicant that the
9 application is incomplete within 20 days of receipt of the
10 application, the application shall be deemed complete. The
11 Department may request additional information as needed to make
12 the completeness determination. The Department may, to the
13 extent practicable, provide the applicant with a reasonable
14 opportunity to correct deficiencies prior to a final
15 determination of completeness. Within 90 days from the receipt
16 of a complete application for permit, the Department shall
17 either issue or deny the permit or issue it with conditions. If
18 a public hearing is held on the application, however, this
19 period shall be extended by 45 days.

20 (f) The Department shall not issue a permit pursuant to
21 this Section unless the Agency has certified that the proposed
22 activity will not cause or contribute to a violation of any
23 State water quality standard. The Agency will be deemed to have
24 certified that the proposed activity will not cause or
25 contribute to a violation of any State water quality standard
26 if it has not declined in writing to so certify within 80 days

1 of the filing of the application unless the Agency has
2 requested that the applicant supply more information relevant
3 to assessing the water quality impacts of the proposed
4 activity. If a public hearing is held on the application,
5 however, this period shall be extended by 45 days.

6 (g) A person may submit concurrent requests for: (i)
7 determination and delineation; (ii) classification; and (iii)
8 issuance of a permit or notification. The Department shall act
9 on such combined requests concurrently in accordance with
10 expedited permitting procedures adopted by the Department.

11 (h) Any person may submit an application for an
12 after-the-fact permit to be issued under this Act, and the
13 Department is authorized to issue such an after-the-fact permit
14 if it determines that the activities covered by the
15 after-the-fact permit application were undertaken and
16 conducted in response to emergency circumstances where there
17 was an imminent threat to persons, public infrastructure,
18 personal property, or uninterrupted utility service that made
19 it impracticable for the applicant to obtain prior
20 authorization under this Act to undertake and conduct such
21 activities. The applicant shall be required to demonstrate that
22 it provided notice to the Department of the emergency
23 circumstances as soon as reasonably possible following the
24 discovery of such circumstances.

25 (i) The Department shall adopt rules to carry out the
26 provisions of this Section in accordance with Section 45 of

1 this Act.

2 Section 35. Surety. The Department may provide by rule for
3 any requirements regarding bonds or letters of credit in favor
4 of the State, including conditions sufficient to secure
5 compliance with conditions and limitations of a permit.

6 Section 40. General permits.

7 (a) Notwithstanding the provisions of Section 30, any
8 person who intends to conduct a regulated activity within the
9 State may do so in accordance with a general permit issued by
10 the Department under this Section.

11 (b) Permits for all categories of activities, subject to
12 the same permit limitations and conditions, that are the
13 subject of a nationwide permit issued by the Corps of Engineers
14 and in effect on the date of the enactment of this Act, are
15 adopted as general permits covering regulated activities
16 subject to this Act.

17 (c) The Department may issue general permits covering other
18 activities that would be subject to the same permit limitations
19 and conditions, if it determines that the activities in such
20 category will cause only minimal adverse environmental effects
21 when performed separately, will have only minimal cumulative
22 adverse effect on the environment, will not cause or contribute
23 to a violation of State water quality standards when performed
24 separately, and will have only a minimal cumulative adverse

1 effect on water quality. The Department may prescribe best
2 management practices for any general permit issued under this
3 Section. The Department shall consider any optional mitigation
4 proposed by an applicant in determining whether the net adverse
5 environmental effects of a proposed regulated activity are
6 minimal.

7 Specifically, the Department must issue general permits
8 for each of the following:

9 (1) The construction or maintenance of access roads for
10 utility lines, substations or related equipment or
11 facilities.

12 (2) Activities for the purpose of preserving and
13 enhancing aviation safety or to prevent an airport hazard.

14 (d) No general permit issued under this Section shall be
15 for a period of more than 5 years after the date of its
16 issuance. A general permit may be revoked or modified by the
17 Department if, after opportunity for public hearing, the
18 Department determines that the activities authorized by the
19 general permit have an adverse impact on the environment, cause
20 or contribute to a violation of State water quality standards,
21 or are more appropriately authorized by individual permits.

22 (e) Compliance with the terms of a general permit shall be
23 deemed compliance with the provisions of this Act if the
24 applicant: (i) files a notice of intent to be covered under the
25 provisions of the general permit in accordance with regulations
26 adopted pursuant to this Act; and (ii) files any reports

1 required by the general permit.

2 (f) The Department shall respond to a notice of intent to
3 proceed under a general permit issued under this Section within
4 30 days after the Department receives the notice. If the
5 Department fails to respond to a notice of intent to proceed
6 within 30 days as required by this subsection (f), the person
7 submitting the notice shall be deemed fully authorized to
8 conduct the activities described in the notice under the terms
9 and conditions of the applicable general permit.

10 Section 45. Wetlands Advisory Committee; duties; rules.

11 (a) The Wetlands Advisory Committee is created, which shall
12 consist of the following 17 voting members appointed by the
13 Governor:

14 Five members representing the interests of business,
15 industry, real estate, and agriculture.

16 Five members selected from the membership of environmental
17 and conservation groups in the State.

18 Two members representing counties exercising authority
19 under Section 5-1062 or 5-1062.1 of the Counties Code to
20 establish stormwater management programs.

21 One member representing municipalities.

22 One member representing building trades unions.

23 Three other members as determined by the Governor.

24 The Director of Natural Resources, or his or her designee,
25 and the Director of the Illinois Environmental Protection

1 Agency, or his or her designee, shall be non-voting members of
2 the Committee.

3 The Committee shall biannually elect from its membership a
4 Chair, who shall not be an employee of the Illinois
5 Environmental Protection Agency or the Department.

6 Members of the Advisory Committee may organize themselves
7 as they deem necessary and shall serve without compensation.

8 The Department shall provide reasonable and necessary
9 staff support to the Committee.

10 (b) Within 120 days after the effective date of this Act,
11 the Committee shall recommend rules to the Department. From
12 time to time the Committee shall review, evaluate, and make
13 recommendations: (i) regarding changes to State laws, rules,
14 and procedures that relate to this Act; and (ii) relating to
15 the Department's efforts to implement this Act.

16 (c) Within 6 months after the effective date of this Act,
17 the Department, after consideration of the recommendations of
18 the Committee, or if the Committee for any reason has not made
19 recommendations, the Department itself, shall adopt any rules
20 required by this Act prescribing procedures and standards for
21 its administration. Nothing in this Act shall preclude, at any
22 time, the recommendation, proposal, or adoption of any other
23 rules deemed necessary for the orderly implementation of this
24 Act.

25 (d) The Committee shall develop a plan for statewide
26 wetlands protection and shall submit such plan to the

1 Department. The Department may seek to obtain a delegation of
2 the Corps of Engineers' authority under Section 404 of the
3 federal Clean Water Act for all wetlands in Illinois on or
4 before July 1, 2022 in accordance with Section 25 of this Act.

5 (e) The Committee shall assist counties having stormwater
6 management authority under Section 5-1062 or 5-1062.1 of the
7 Counties Code in coordinating and unifying stormwater
8 management regulations adopted thereto, as required in
9 subsection (f) of Section 60.

10 Section 50. Appeal of final Department decision; judicial
11 review.

12 (a) Any permit applicant who has been denied a permit in
13 whole or in part, and any person who participated in the permit
14 proceeding and who is aggrieved by a decision of the Department
15 to grant a permit in whole or in part, may appeal the decision
16 to the Director within 35 days of the permit grant or denial.
17 However, the 35-day period for appealing to the Director may be
18 extended by the applicant for a period of time not to exceed 90
19 days by written notice provided to the Director. In all such
20 appeals, the burden of persuasion shall be on the party
21 appealing the Department's decision.

22 (b) A person aggrieved by a final decision made under this
23 Act may seek judicial review of the decision under the
24 Administrative Review Law.

1 Section 55. Investigation; enforcement.

2 (a) In accordance with constitutional limitations, the
3 Department shall have authority to enter at all reasonable
4 times upon any private or public property for the purpose of
5 inspecting and investigating to ascertain possible violations
6 of this Act or of rules adopted hereunder, or of permits and
7 the terms or conditions thereof.

8 (b) The civil penalties provided for in this Section may be
9 recovered in a civil action which may be instituted in a court
10 of competent jurisdiction. The State's Attorney of the county
11 in which the alleged violation occurred, or the Attorney
12 General, may, at the request of the Department or on his or her
13 own motion, institute a civil action in a court of competent
14 jurisdiction to recover civil penalties and to obtain an
15 injunction to restrain violations of the Act.

16 (c) Any person who violates any provision of this Act or
17 any rule adopted hereunder, or any permit or term or condition
18 thereof, shall be liable for a civil penalty of not to exceed
19 \$10,000 per day of violation; such penalties may be made
20 payable to the Wetlands Protection Fund and shall be deposited
21 into that Fund as provided in subsection (j). In determining
22 the appropriate civil penalty to be imposed under this Section,
23 the Court is authorized to consider any matters of record in
24 mitigation or aggravation of penalty, including but not limited
25 to the following factors:

26 (1) The duration and gravity of the violation.

1 (2) The presence or absence of due diligence on the
2 part of the violator in attempting to comply with
3 requirements of this Act and rules adopted hereunder or to
4 secure relief therefrom as provided by this Act.

5 (3) Any economic benefits accrued by the violator
6 through the violation.

7 (4) The amount of monetary penalty which will serve to
8 deter further violations by the violator and to otherwise
9 aid in enhancing voluntary compliance with this Act by the
10 violator and other persons similarly subject to this Act.

11 (5) The number, proximity in time, and gravity of
12 previously adjudicated violations of this Act by the
13 violator.

14 (d) Any violation of any provision of this Act or any rule
15 adopted hereunder, or any permit or term or condition thereof,
16 shall not be deemed a criminal offense.

17 (e) All final orders imposing civil penalties pursuant to
18 this Section shall prescribe the time for payment of such
19 penalties. If any such penalty is not paid within the time
20 prescribed, interest on such penalty at the rate set forth in
21 subsection (a) of Section 1003 of the Illinois Income Tax Act
22 shall be paid for the period from the date payment is due until
23 the date payment is received. However, if the time for payment
24 is stayed during the pendency of an appeal, interest shall not
25 accrue during such stay.

26 (f) The Department may terminate a permit if the holder

1 substantially violates any condition of the permit, obtains a
2 permit by misrepresentation, or fails to disclose relevant
3 facts.

4 (g) The Attorney General, or the State's Attorney of the
5 county where the affected wetland is located, may, upon his or
6 her own motion or upon request of the Department, institute a
7 civil action in circuit court for an injunction or other
8 appropriate legal action to restrain a violation of this Act or
9 of any rule adopted under this Act. In the proceeding the court
10 shall determine whether a violation has been committed or is
11 likely to occur, and shall enter any order it considers
12 necessary to remove the effects of the violation and to prevent
13 the violation from occurring, continuing, or being renewed in
14 the future. An order may include a requirement that the
15 violator restore the affected wetland area, including a
16 provision that, if the violator does not comply by restoring
17 the wetland within a reasonable time, the Department may
18 restore the wetland to its condition prior to the violation and
19 the violator shall be liable to the Department for the cost of
20 restoration.

21 (h) Any penalty assessed under this Act, including costs of
22 wetland restoration and any restoration requirement, shall be
23 recorded by the clerk of the court as a lien against the land
24 and shall not be removed until the penalty is paid or the
25 restoration is completed.

26 (i) All costs, fees, and expenses in connection with an

1 enforcement or restoration action shall be assessed as damages
2 against the violator.

3 (j) All penalties collected under this Section shall be
4 deposited into the Wetlands Protection Fund.

5 (k) Enforcement actions under this Section may be
6 concurrent or separate.

7 Section 60. County authority.

8 (a) Nothing in this Act preempts or denies the right of any
9 governmental body with a stormwater management program under
10 Section 5-1062 of the Counties Code to control or regulate
11 activities in any wetlands within the jurisdiction of the
12 governmental body.

13 (b) Upon the request of a governmental body with a
14 stormwater management program under Section 5-1062 of the
15 Counties Code, the Director shall, within 30 calendar days of
16 receiving the request, provide a letter recognizing whether the
17 governmental body's stormwater management program:

18 (1) provides wetlands protection consistent with the
19 intent of this Act; and

20 (2) has an administration and qualified staff to
21 implement the governmental body's stormwater management
22 program.

23 (c) After consultation with the Department, the General
24 Assembly finds and declares that the stormwater management
25 programs implemented by DuPage, Lake, and Kane Counties under

1 Section 5-1062 of the Counties Code, as they exist on the
2 effective date of this Act, meet the requirements of subsection
3 (b), and therefore they shall be deemed to have received
4 recognition and approval under that subsection without further
5 action by the Department.

6 (d) Activities within or affecting wetlands that occur
7 within the jurisdiction of a governmental body with a
8 stormwater management program under Section 5-1062 of the
9 Counties Code that meets the provisions of paragraphs (1) and
10 (2) of subsection (b) of this Section are exempt from the
11 requirements of this Act, but must meet those county stormwater
12 management requirements, at a minimum. This exemption also
13 applies during the period that the Department is considering a
14 county's request under subsection (b), but the requirements of
15 this Act do apply until the county has requested recognition
16 under subsection (b), unless the county has received immediate
17 recognition under subsection (c) of this Section.

18 (e) The Director may rescind recognition status if the
19 governmental body with a stormwater management program under
20 Section 5-1062 of the Counties Code no longer meets the
21 provisions of paragraphs (1) and (2) of subsection (b) of this
22 Section.

23 (f) A governmental body with a stormwater management
24 program under Section 5-1062 of the Counties Code that has
25 obtained recognition by the Director under subsection (b) of
26 this Section shall submit an annual report to the Director.

1 (g) Counties having authority under Section 5-1062 of the
2 Counties Code to adopt a stormwater management program shall
3 seek with the assistance of the Northeastern Illinois Planning
4 Commission to coordinate and unify regulations adopted
5 pursuant thereto.

6 (h) Nothing in this Act shall be construed as a limitation
7 or preemption of any home rule power.

8 Section 65. Wetlands Protection Fund. All penalties
9 collected by the Department pursuant to this Act shall be
10 deposited into the Wetlands Protection Fund, which is hereby
11 created as a special fund in the State Treasury. In addition to
12 any moneys that may be appropriated from the General Revenue
13 Fund, the Illinois General Assembly shall appropriate moneys in
14 the Wetlands Protection Fund to the Department in amounts
15 deemed necessary to implement this Act.

16 Section 95. The State Finance Act is amended by adding
17 Section 5.891 as follows:

18 (30 ILCS 105/5.891 new)

19 Sec. 5.891. The Wetlands Protection Fund.

20 Section 97. Severability. The provisions of this Act are
21 severable under Section 1.31 of the Statute on Statutes.

22 Section 99. Effective date. This Act takes effect upon

1 becoming law.