

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  
9 area of a county with a population greater than 3,000,000.

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

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

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

18 (c) "Agency" means the Illinois Environmental Protection  
19 Agency.

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

22 (e) "Avoidance" means any action taken in a manner such  
23 that a regulated activity will not occur.

24 (f) "Bog" means a peat-accumulating wetland that has no  
25 significant inflows or outflows and supports acidophilic  
26 mosses, particularly sphagnum, resulting in highly acidic  
27 conditions.

28 (g) "Commencing such a regulated activity" means any  
29 steps taken in preparation of conducting a regulated activity  
30 that may impact the affected property, such as cutting,

1 filling, pumping of water, and earth movement.

2 (h) "Committee" means the Wetlands Advisory Committee.

3 (i) "Contiguous wetland" means a wetland that is  
4 delineated on the affected property and extends beyond the  
5 boundary of that property.

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

18 (k) "Corps of Engineers" or "COE" means the United  
19 States Army Corps of Engineers.

20 (l) "Cypress swamp" means forested, permanent or  
21 semi-permanent bodies of water, with species assemblages  
22 characteristic of the Gulf and Southeastern Coastal Plains,  
23 including bald cypress, which are restricted to extreme  
24 southern Illinois.

25 (m) "Department" means the Illinois Department of  
26 Natural Resources.

27 (n) "Director" means the Director of Natural Resources.

28 (o) "Fen" means a wetland fed by an alkaline water  
29 source such as a calcareous spring or seep.

30 (p) "Floristic quality index" means an index calculated  
31 using the Floristic Quality Assessment Method of assessing  
32 floristic integrity (or quality) by summing the numerical  
33 quality ratings of all plant species present then dividing  
34 the total by the number of native species present (mean

1 coefficient of conservatism) or by the square root of the  
2 number of native species (floristic quality index). (Taft,  
3 J.B., G.S. Wilhelm, D.M. Ladd, and L.A. Masters. 1997.  
4 Floristic quality assessment for vegetation in Illinois, a  
5 method for assessing vegetation integrity. *Erigenia* 15:  
6 3-95.)

7 (q) "Incidentally created" means created as a result of  
8 any normal or routine activity coincidental with the conduct  
9 of legitimate business enterprises, except that a wetland or  
10 depression created as mitigation for any activity affecting  
11 wetlands is not "incidentally created."

12 (r) "Incidental fallback" means the redeposit of small  
13 volumes of dredged material that is incidental to excavation  
14 activity in waters of the State when such material falls back  
15 to substantially the same place as the initial removal.

16 (s) "Isolated wetlands" means those areas that are  
17 inundated or saturated by surface or ground water at a  
18 frequency or duration sufficient to support, and that under  
19 normal circumstances do support, a prevalence of vegetation  
20 typically adapted for life in saturated soil conditions, and  
21 that are not regulated under the federal Clean Water Act.

22 (t) "Panne" means wet interdunal flats located near Lake  
23 Michigan.

24 (u) "Person" means an individual, partnership,  
25 co-partnership, firm, company, limited liability company,  
26 corporation, association, joint stock company, trust, estate,  
27 political subdivision, State agency, or other legal entity,  
28 or its legal representative, agent, or assigns.

29 (v) "Prior converted cropland" means a converted wetland  
30 where the conversion occurred prior to December 23, 1985, an  
31 agricultural commodity has been produced at least once before  
32 December 23, 1985, and as of December 23, 1985, the converted  
33 wetland did not support woody vegetation and met the  
34 following hydrologic criteria: (i) inundation was less than

1 15 consecutive days during the growing season or 10% of the  
 2 growing season, whichever is less, in most years (50% chance  
 3 or more); and (ii) if a pothole, ponding was less than 7  
 4 consecutive days during the growing season in most years (50%  
 5 chance or more) and saturation was less than 14 consecutive  
 6 days during the growing season most years (50% chance or  
 7 more).

8 (w) "Regulated activity" means the discharge of dredged  
 9 or fill material into a wetland, the drainage of a wetland,  
 10 or excavation of a wetland that results in more than  
 11 incidental fallback.

12 (x) "Threatened or endangered species" means those  
 13 species that have been designated as threatened or endangered  
 14 by the Illinois Endangered Species Protection Board pursuant  
 15 to the Illinois Endangered Species Protection Act and those  
 16 species that have been designated as threatened or endangered  
 17 by the U.S. Fish and Wildlife Service pursuant to the  
 18 Endangered Species Act.

19 (y) "Upland" means non-wetland, when used to describe a  
 20 particular land use, or non-hydric, when used to describe a  
 21 soil type.

22 (z) "Wetlands" means those areas that are inundated or  
 23 saturated by surface or ground water at a frequency or  
 24 duration sufficient to support, and that under normal  
 25 circumstances do support, a prevalence of vegetation  
 26 typically adapted for life in saturated soil conditions.

27 Section 20. Exemptions.

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

32 (1) Normal farming, silviculture, and ranching  
 33 activities such as plowing, seeding, cultivating, minor

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

4 (2) Maintenance, including emergency reconstruction  
5 of recently damaged parts, of currently serviceable  
6 structures such as 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  
10 ponds or irrigation canals or ditches, or the maintenance  
11 of drainage ditches.

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

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

24 (6) Except for Class IA and Class IB wetlands,  
25 activities for the placement of pilings for linear  
26 projects, such as bridges, elevated walkways, and power  
27 line structures in accordance with best management  
28 practices, to assure that the flow and circulation  
29 patterns and chemical and biological characteristics of  
30 the wetland are not impaired, that the reach of the  
31 wetland is not reduced, and that any adverse effect on  
32 the aquatic environment will be otherwise minimized.

33 (7) Installation and maintenance of signs,  
34 lighting, and fences and the mowing of vegetation within

1 existing maintained rights-of-way.

2 (8) Repair and maintenance of existing buildings,  
3 facilities, lawns, and ornamental plantings.

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

7 (10) Application of media, including deicing media,  
8 on the surface of existing roads for purposes of public  
9 safety.

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

13 (12) Wetland management practices on lands that are  
14 used primarily for the management of waterfowl, other  
15 migratory water birds, or furbearers if such practices  
16 took place on these lands prior to the effective date of  
17 this Act. This includes vegetation management that may  
18 include the use of fire, chemical, or mechanical  
19 (hydro-axe, bulldozer, roto disk, or similar equipment)  
20 removal of invading woody or herbaceous vegetation to  
21 maintain a preferred successional stage. Use of  
22 chemicals must be by a certified applicator and chemicals  
23 must be registered for appropriate use. Clearing or  
24 removal of woody vegetation shall be limited to 4-inch  
25 dbh (diameter at breast height) or smaller material for  
26 the purpose of establishing or maintaining the  
27 successional stage of a wetland as an herbaceous wetland  
28 vegetated by native moist soil plants or selected  
29 wildlife food plants.

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

34 (c) The following are not isolated wetlands for purposes

1 of this Act:

2 (1) Waste treatment systems, including treatment  
3 ponds or lagoons, designed to comply with water quality  
4 standards of the State or to remediate a site in  
5 accordance with an approved Agency program, and former  
6 waste treatment systems that have ceased operation less  
7 than 33 years prior to commencement of the proposed  
8 activity or which are undergoing remediation in  
9 accordance with an approved Agency program.

10 (2) A drainage or irrigation ditch.

11 (3) An artificially irrigated area that would  
12 revert to upland if the irrigation ceased.

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

18 (5) Except for isolated wetlands created pursuant  
19 to mining activities regulated in accordance with item  
20 (7) below, an incidentally created water-filled  
21 depression, unless: (i) ownership of the property  
22 containing the depression has been transferred away from  
23 the party who incidentally created the water-filled  
24 depression, (ii) that ownership transfer occurred more  
25 than 12 months prior to the commencement of an otherwise  
26 regulated activity, (iii) the use of the property has  
27 changed from the use that existed when the property was  
28 transferred from the party who incidentally created the  
29 water-filled depression, and (iv) the resulting body of  
30 water meets the definition in this Act of an isolated  
31 wetland; or if the ownership of the property has not been  
32 transferred from the party who created the incidentally  
33 created water-filled depression, the depression was not  
34 created more than 33 years before the date the

1 application is received by the Department.

2 (6) Stormwater or spill management systems,  
3 including retention and detention basins, ditches and  
4 channels, and former stormwater or spill management  
5 systems that have ceased operation less than 33 years  
6 prior to commencement of the proposed activity or which  
7 are undergoing remediation in accordance with an approved  
8 Agency program.

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

18 (8) Prior converted cropland.

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

22 Section 25. Applicability. Until June 30, 2007, the  
23 requirements of this Act apply to all isolated wetlands as  
24 that term is defined in this Act. In the event that an  
25 isolated wetland ceases to meet that definition because it  
26 becomes subject to regulation under the federal Clean Water  
27 Act, such wetland shall no longer be subject to the  
28 provisions of this Act.

29 Beginning July 1, 2007, the requirements of this Act  
30 apply to all wetlands as that term is defined in this Act,  
31 unless a COE permit is required; provided, however, that if  
32 an exemption under Section 20 applies, that exemption shall  
33 continue in effect after July 1, 2007.

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

9           Section 30. Wetlands delineation, classification,  
10 notification, permits. The requirements of this Section  
11 apply upon the adoption of rules under Sections 45(c) and 60  
12 of this Act, or 270 days from the effective date of this Act,  
13 whichever occurs first.

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

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

26           The person seeking a determination shall provide the  
27 Department with sufficient information to render such a  
28 determination. Such information shall include a wetland  
29 delineation made in accordance with the COE Wetlands  
30 Delineation Manual, Technical Report Y-87-1. Delineation of  
31 the portion of a contiguous wetland not on the affected  
32 property shall be made to the extent reasonably possible, and  
33 methods other than physical onsite evaluations shall be

1 considered by the Department.

2 The Department shall provide notice to the applicant as  
3 to whether a submitted application is complete. Unless the  
4 Department notifies the applicant that the application is  
5 incomplete within 15 days of receipt of the application, the  
6 application shall be deemed complete. The Department may  
7 request additional information as needed to make the  
8 completeness determination.

9 The Department shall, upon receipt of a complete  
10 determination request, provide the person, within 30 days,  
11 with a determination as to the existence, location, and  
12 surface area of wetlands located on or contiguous to the  
13 affected property.

14 If the Department determines that there are no wetlands  
15 on the affected property, any otherwise regulated activity  
16 conducted on the property shall not be subject to the  
17 provisions of this Act.

18 If the Department determines that there is one or more  
19 wetlands on or contiguous to the affected property, the  
20 person may apply to the Department for classification of such  
21 wetlands.

22 Any determination of a wetland by the Department is a  
23 final decision for purposes of appeal.

24 (c) If any person intends to conduct a regulated  
25 activity, such person may, prior to commencing such a  
26 regulated activity, request that the wetland be classified as  
27 Class IA, IB, II, or III in accordance with the provisions of  
28 this Section. Nothing in this Section shall require the  
29 person to seek such a classification; however, any wetlands  
30 not so classified shall be considered Class IA for the  
31 purposes of this Act.

32 The person seeking a classification shall provide the  
33 Department with sufficient information to render such a  
34 classification. Such information shall include a wetland

1 delineation made in accordance with the COE Wetlands  
2 Delineation Manual, Technical Report Y-87-1.

3 Unless the Department notifies the applicant that the  
4 application is incomplete within 15 days of receipt of the  
5 application, the application shall be deemed complete. The  
6 Department may request additional information as needed to  
7 make the completeness determination. The Department shall,  
8 upon receipt of a complete classification request, provide  
9 the person, within 30 days, with a classification of wetlands  
10 located on or contiguous to the affected property. If the  
11 Department fails to provide the person with a classification  
12 within 30 days, the classification requested by the person  
13 shall be deemed granted.

14 Wetlands shall be classified as follows:

15 (1) The Department shall classify a wetland as a  
16 Class IA Wetland if and only if:

- 17 (A) the wetland is or encompasses a bog;
- 18 (B) the wetland is or encompasses a fen;
- 19 (C) the wetland is or encompasses a panne;
- 20 (D) the wetland is or encompasses a cypress  
21 swamp;

22 (E) the wetland is or encompasses a Category I  
23 Illinois Natural Areas Inventory Site, provided that  
24 the Department shall disclose within 5 working days  
25 of a request from an applicant, a prospective  
26 applicant, or a qualified professional on behalf of  
27 an applicant or a prospective applicant whether a  
28 site identified by latitude and longitude includes a  
29 Category I Illinois Natural Areas Inventory Site; or

30 (F) a threatened or endangered species has  
31 been identified in the wetland.

32 (2) The Department shall classify a wetland as a  
33 Class IB Wetland if and only if the wetland:

- 34 (A) is or encompasses an ADID site;

1                   (B) is or encompasses a Category VI Illinois  
 2                   Natural Area Inventory Site or regional equivalent;  
 3                   provided that the Department shall disclose within 5  
 4                   working days of a request from an applicant, a  
 5                   prospective applicant, or a qualified professional  
 6                   on behalf of an applicant or a prospective applicant  
 7                   whether a site identified by latitude and longitude  
 8                   includes a Category VI Illinois Natural Areas  
 9                   Inventory Site; or

10                   (C) has a Floristic Quality Index (FQI) which  
 11                   is equal to or greater than 20 or a mean coefficient  
 12                   of conservatism (Mean C) equal to or greater than  
 13                   3.5, determined in accordance with rules adopted by  
 14                   the Department.

15                   (3) The Department shall classify a wetland as a  
 16                   Class II Wetland if and only if the wetland is not a  
 17                   Class I-A, Class I-B, or Class III wetland.

18                   (4) The Department shall classify a wetland as a  
 19                   Class III Wetland if and only if:

20                   (A) the wetland is not a Class IA or Class  
 21                   IB wetland; and

22                   (B) the total size of the wetland, including  
 23                   contiguous areas, is

24                   (i) less than 0.25 acre, or

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

30                   (d) Subject to the provisions of Section 40 regarding  
 31                   general permits, no person may conduct or cause to be  
 32                   conducted a regulated activity within or affecting a wetland  
 33                   in such a manner that the biological or hydrological  
 34                   integrity of the wetland is impaired within the scope of this

1 Act, except in accordance with the terms of an individual  
2 permit issued by the Department or authorization to proceed  
3 as applicable under this Section.

4 (1) Class IA Wetlands:

5 (A) A permit to conduct a regulated activity  
6 affecting a Class IA wetland within the scope of  
7 this Act shall be granted if documentation is  
8 submitted that demonstrates that complete avoidance  
9 of impacts to the Class IA wetland precludes all  
10 economic use of the entire parcel and that no  
11 practicable alternative to wetland modification  
12 exists.

13 Based upon a review of the submitted  
14 documentation and any other available resources, the  
15 Department shall make a determination as to whether  
16 the proposed modification represents the least  
17 amount of wetland impact required to restore an  
18 economic use to the upland portion of the parcel.

19 Wetland losses shall be mitigated at a ratio of  
20 4.5:1 and shall be mitigated in kind and within the  
21 same watershed as the impacted area restoring, to  
22 the maximum degree practicable as determined by the  
23 Department, both the type and functions of the  
24 wetland that will be affected by the regulatory  
25 activity.

26 The Director, for good cause shown and on a  
27 case-by-case basis, may authorize an upward or  
28 downward departure from the mitigation ratio  
29 otherwise required under this subdivision (d)(1),  
30 but for a Class IA wetland the Director shall  
31 require a mitigation ratio of at least 4:1 and shall  
32 not require a mitigation ratio greater than 5:1.

33 (B) No permit under this subdivision (d)(1)  
34 may be issued by the Department without a public

1 notice and a public hearing.

2 (2) Class IB Wetlands:

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

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

14 Wetland losses shall be mitigated at a ratio of  
15 3:1 and shall be mitigated in kind and within the  
16 same watershed as the impacted area, restoring both  
17 the type and functions of the wetlands that will be  
18 affected by the regulated activity.

19 The Director, for good cause shown and on a  
20 case-by-case basis, may authorize an upward or  
21 downward departure from the mitigation ratio  
22 otherwise required under this subdivision (d)(2),  
23 but for a Class IB wetland the Director shall  
24 require a mitigation ratio of at least 2.5:1 and  
25 shall not require a mitigation ratio greater than  
26 3.5:1.

27 (B) No permit under this subdivision (d)(2)  
28 may be issued by the Department without a public  
29 notice and opportunity for public hearing being  
30 afforded. The Department shall hold a public  
31 hearing concerning a permit application if the  
32 proposed activity may have a significant impact upon  
33 wetland resources or if the Department determines  
34 that a public hearing is 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  
4 this Act shall be granted if documentation is  
5 submitted demonstrating that no reasonable  
6 alternative to wetland modification exists.

7 Based upon a review of the submitted  
8 documentation and any other available resources, the  
9 Department shall make a determination as to whether  
10 the proposed modification constitutes the least  
11 amount of wetland impact practicable and whether a  
12 permit should be 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  
16 the type and functions of the wetland that will be  
17 affected by the regulated activity.

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

26 (4) Class III Wetlands:

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

31 (B) Such notification shall include (1) a  
32 sketch that reasonably depicts the area that will be  
33 affected by the regulated activity, including  
34 wetland and water boundaries for the areas affected

1 and the existing land uses and structures; (2) a  
2 description of the proposed activity, including its  
3 purpose; (3) a description of any public benefit to  
4 be derived from the proposed project; and (4) the  
5 names and addresses of adjacent landowners as  
6 determined by the current tax assessment rolls.

7 (C) Upon receipt of a notification of intent,  
8 the Department shall verify that the regulated  
9 activity will affect a wetland that it previously  
10 classified as Class III.

11 If the Department so verifies, the Department  
12 shall send the person, within 30 days of the receipt  
13 of such notification, a response stating that the  
14 regulated activity may proceed.

15 If the Department cannot so verify, the  
16 Department shall send the person, within 30 days of  
17 the receipt of such notification, a response stating  
18 that no classification has been made by the  
19 Department, or that a Classification of IA, IB, or  
20 II was made and that the regulated activity may not  
21 proceed until either a classification is made  
22 pursuant to this Section, or a permit is obtained,  
23 as applicable.

24 Failure of the Department to respond to a  
25 notification shall be deemed an authorization to  
26 proceed.

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

31 (e) Within 15 days of the receipt of a permit  
32 application, the Department shall determine if an application  
33 is complete. To be deemed complete, an application must  
34 provide all information, as requested in Department

1 application forms, sufficient to evaluate the application.  
2 Such information shall include, at a minimum: (1) a map of  
3 the area that will be affected by the activity, including  
4 wetland and water boundaries for the areas affected and the  
5 existing uses and structures. Such information shall include  
6 a wetland delineation made in accordance with the COE  
7 Wetlands Delineation Manual, Technical Report Y-87-1; (2) a  
8 description of the proposed activity, including its purpose,  
9 the location and dimensions of any structures, grading or  
10 fills, drainage, roads, sewers and water supply, parking  
11 lots, stormwater facilities, discharge of pollutants, and  
12 onsite waste disposal; (3) a description of any public  
13 benefit to be derived from the proposed project; and (4) the  
14 names and addresses of adjacent landowners as determined by  
15 the current tax assessment rolls. The Department application  
16 forms shall be finalized and made available prior to the date  
17 on which any application is required. The Department shall  
18 provide notice to the applicant as to whether a submitted  
19 application is complete. Unless the Department notifies the  
20 applicant that the application is incomplete within 20 days  
21 of receipt of the application, the application shall be  
22 deemed complete. The Department may request additional  
23 information as needed to make the completeness determination.  
24 The Department may, to the extent practicable, provide the  
25 applicant with a reasonable opportunity to correct  
26 deficiencies prior to a final determination of completeness.  
27 Within 90 days from the receipt of a complete application for  
28 permit, the Department shall either issue or deny the permit  
29 or issue it with conditions. If a public hearing is held on  
30 the application, however, this period shall be extended by 45  
31 days.

32 (f) The Department shall not issue a permit pursuant to  
33 this Section unless the Agency has certified that the  
34 proposed activity will not cause or contribute to a violation

1 of any State water quality standard. The Agency will be  
2 deemed to have certified that the proposed activity will not  
3 cause or contribute to a violation of any State water quality  
4 standard if it has not declined in writing to so certify  
5 within 80 days of the filing of the application unless the  
6 Agency has requested that the applicant supply more  
7 information relevant to assessing the water quality impacts  
8 of the proposed activity. If a public hearing is held on the  
9 application, however, this period shall be extended by 45  
10 days.

11 (g) A person may submit concurrent requests for (i)  
12 determination and delineation, (ii) classification, and (iii)  
13 issuance of a permit or notification. The Department shall  
14 act on such combined requests concurrently in accordance with  
15 expedited permitting procedures adopted by the Department.

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

30 (i) The Department shall adopt rules to carry out the  
31 provisions of this Section in accordance with Section 45 of  
32 this Act.

33 Section 35. Surety. The Department may provide by rule

1 for any requirements regarding bonds or letters of credit in  
2 favor of the State, including conditions sufficient to secure  
3 compliance with conditions and limitations of a permit.

4 Section 40. General permits.

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

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

15 (c) The Department may adopt general permits covering  
16 other activities that would be subject to the same permit  
17 limitations and conditions, if it determines that the  
18 activities in such category will cause only minimal adverse  
19 environmental effects when performed separately, will have  
20 only minimal cumulative adverse effect on the environment,  
21 will not cause or contribute to a violation of State water  
22 quality standards when performed separately, and will have  
23 only a minimal cumulative adverse effect on water quality.  
24 The Department may prescribe best management practices for  
25 any general permit issued under this Section. The Department  
26 shall consider any optional mitigation proposed by an  
27 applicant in determining whether the net adverse  
28 environmental effects of a proposed regulated activity are  
29 minimal.

30 Specifically, the Department must adopt general permits  
31 for each of the following:

32 (1) The construction or maintenance of access roads  
33 for utility lines, substations or related equipment or

1 facilities.

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

5 (d) No general permit adopted under this Section shall  
6 be for a period of more than 5 years after the date of its  
7 issuance. A general permit may be revoked or modified by the  
8 Department if, after opportunity for public hearing, the  
9 Department determines that the activities authorized by the  
10 general permit have an adverse impact on the environment,  
11 cause or contribute to a violation of State water quality  
12 standards, or are more appropriately authorized by individual  
13 permits.

14 (e) Compliance with the terms of a general permit shall  
15 be deemed compliance with the provisions of this Act if the  
16 applicant (i) files a notice of intent to be covered under  
17 the provisions of the general permit in accordance with  
18 regulations adopted pursuant to this Act and (ii) files any  
19 reports required by the general permit.

20 (f) The Department shall respond to a notice of intent  
21 to proceed under a general permit issued under this Section  
22 within 30 days after the Department receives the notice. In  
23 the event that the Department fails to respond to a notice of  
24 intent to proceed within 30 days as required by this  
25 subsection (f), the person submitting the notice shall be  
26 deemed fully authorized to conduct the activities described  
27 in the notice under the terms and conditions of the  
28 applicable general permit.

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

30 (a) There is hereby established a Wetlands Advisory  
31 Committee, which shall consist of 17 members appointed by the  
32 Governor and 2 non-voting members.

33 The Committee shall include 5 members representing the

1 interests of business, industry, real estate, and  
2 agriculture.

3 The Committee shall include 5 members selected from the  
4 membership of environmental and conservation groups in the  
5 State.

6 The Committee shall include 2 members representing  
7 counties exercising authority under Section 5-1062 or  
8 5-1062.1 of the Counties Code to establish stormwater  
9 management programs.

10 The Committee shall include one member representing  
11 municipalities.

12 The Committee shall include one member representing  
13 building trades unions.

14 The Committee shall include 3 other members as determined  
15 by the Governor.

16 The Director of Natural Resources, or his or her  
17 designee, and the Director of the Illinois Environmental  
18 Protection Agency, or his or her designee, shall be  
19 non-voting members of the Committee.

20 The Committee shall biannually elect from its membership  
21 a Chair, who shall not be an employee of the Illinois  
22 Environmental Protection Agency or the Illinois Department of  
23 Natural Resources.

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

26 The Department shall provide reasonable and necessary  
27 staff support to the Committee.

28 (b) Within 120 days after the effective date of this  
29 Act, the Committee shall recommend rules to the Department.  
30 From time to time the Committee shall review, evaluate, and  
31 make recommendations (i) regarding State laws, rules, and  
32 procedures that relate to this Act and (ii) relating to the  
33 State's efforts to implement this Act.

34 (c) Within 6 months after the effective date of this

1 Act, the Department, after consideration of the  
2 recommendations of the Committee (or if the Committee for any  
3 reason has not made recommendations, the Department itself),  
4 shall adopt any rules required by this Act prescribing  
5 procedures and standards for its administration. Nothing in  
6 this Act shall preclude, at any time, the recommendation,  
7 proposal, or adoption of any other rules deemed necessary for  
8 the orderly implementation of this Act.

9 (d) The Committee shall develop a plan for statewide  
10 wetlands protection and shall submit such plan to the  
11 Department. The Department may seek to obtain a delegation  
12 of COE authority under Section 404 of the federal Clean Water  
13 Act for all wetlands in Illinois on or before July 1, 2007 in  
14 accordance with Section 25 of this Act.

15 (e) The Committee shall assist counties having  
16 stormwater management authority under Section 5-1062 or  
17 5-1062.1 of the Counties Code in coordinating and unifying  
18 stormwater management regulations adopted thereto, as  
19 required in Section 65(f) of this Act.

20 Section 50. Appeal of final Department decision;  
21 judicial review.

22 (a) Any permit applicant who has been denied a permit in  
23 whole or in part, and any person who participated in the  
24 permit proceeding and who is aggrieved by a decision of the  
25 Department to grant a permit in whole or in part, may appeal  
26 the decision to the Director within 35 days of the permit  
27 grant or denial. However, the 35-day period for appealing to  
28 the Director may be extended by the applicant for a period of  
29 time not to exceed 90 days by written notice provided to the  
30 Director. In all such appeals, the burden of persuasion  
31 shall be on the party appealing the Department's decision.

32 (b) A person aggrieved by a final decision made pursuant  
33 to this Act may seek judicial review of the decision pursuant

1 to the Administrative Review Law.

2 Section 55. Investigation; enforcement.

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

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

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

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

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

32 (3) Any economic benefits accrued by the violator  
33 through the violation.

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

6           (5) The number, proximity in time, and gravity of  
7           previously adjudicated violations of this Act by the  
8           violator.

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

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

21          (f) The Department may terminate a permit if the holder  
22          substantially violates any condition of the permit, obtains a  
23          permit by misrepresentation, or fails to disclose relevant  
24          facts.

25          (g) The Attorney General, or the State's Attorney of the  
26          county where the affected wetland is located, may, upon his  
27          or her own motion or upon request of the Department,  
28          institute a civil action in circuit court for an injunction  
29          or other appropriate legal action to restrain a violation of  
30          this Act or of any rule adopted under this Act. In the  
31          proceeding the court shall determine whether a violation has  
32          been committed or is likely to occur, and shall enter any  
33          order it considers necessary to remove the effects of the  
34          violation and to prevent the violation from occurring,

1 continuing, or being renewed in the future. An order may  
2 include a requirement that the violator restore the affected  
3 wetland area, including a provision that, if the violator  
4 does not comply by restoring the wetland within a reasonable  
5 time, the Department may restore the wetland to its condition  
6 prior to the violation and the violator shall be liable to  
7 the Department for the cost of restoration.

8 (h) Any penalty assessed pursuant to this Act, including  
9 costs of wetland restoration and any restoration requirement,  
10 shall be recorded by the clerk of the court as a lien against  
11 the land and shall not be removed until the penalty is paid  
12 or the restoration is completed.

13 (i) All costs, fees, and expenses in connection with an  
14 enforcement or restoration action shall be assessed as  
15 damages against the violator.

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

18 (k) Enforcement actions under this Section may be  
19 concurrent or separate.

20 Section 60. Fees.

21 (a) Within 90 days after the effective date of this Act  
22 the Department shall propose to the Illinois Pollution  
23 Control Board, and within 6 months of receiving that proposal  
24 the Board shall adopt by rule:

25 (1) a minimal processing fee for notification  
26 regarding Class III Wetlands and for processing a notice  
27 of intent to proceed under a general permit; and

28 (2) a schedule of permit fees for single regulated  
29 activities in Class IA, Class IB, and Class II wetlands.

30 (b) These fees shall be set at levels that allow the  
31 wetlands program to operate financially on a self-sustaining  
32 basis. The Department shall annually review the fees to  
33 determine whether the wetlands program is operating

1 financially on a self-sustaining basis, and it may propose  
2 any necessary changes in the fees to the Illinois Pollution  
3 Control Board.

4 Section 65. County authority.

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

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

15 (1) provides wetlands protection consistent with  
16 the intent of this Act; and

17 (2) has an administration and qualified staff to  
18 implement the governmental body's stormwater management  
19 program.

20 (b-5) After consultation with the Department of Natural  
21 Resources, the General Assembly finds and declares that the  
22 stormwater management programs implemented by DuPage, Lake,  
23 and Kane Counties under Section 5-1062 of the Counties Code,  
24 as they exist at the time of the passage of this Act, meet  
25 the requirements of subsection (b), and therefore they shall  
26 be deemed to have received recognition and approval under  
27 that subsection without further action by the Department.

28 (c) Activities within or affecting wetlands that occur  
29 within the jurisdiction of a governmental body with a  
30 stormwater management program under Section 5-1062 of the  
31 Counties Code that meets the provisions of subdivisions  
32 (b)(1) and (b)(2) of this Section are exempt from the  
33 requirements of this Act, but must meet those county

1 stormwater management requirements, at a minimum. This  
2 exemption also applies during the period that the Department  
3 is considering a county's request under subsection (b), but  
4 the requirements of this Act do apply until the county has  
5 requested recognition under subsection (b), unless the county  
6 has received immediate recognition under subsection (b-5) of  
7 this Section.

8 (d) The Director may rescind recognition status in the  
9 event that the governmental body with a stormwater management  
10 program under Section 5-1062 of the Counties Code no longer  
11 meets the provisions of subdivisions (b)(1) and (b)(2) of  
12 this Section.

13 (e) A governmental body with a stormwater management  
14 program under Section 5-1062 of the Counties Code that has  
15 obtained recognition by the Director under subsection (b) of  
16 this Section shall submit an annual report to the Director.

17 (f) Counties having authority under Section 5-1062 of  
18 the Counties Code to adopt a stormwater management program  
19 shall seek with the assistance of the Northeastern Illinois  
20 Planning Commission to coordinate and unify regulations  
21 adopted pursuant thereto.

22 (g) Nothing in this Act shall be construed as a  
23 limitation or preemption of any home rule power.

24 Section 70. Wetlands Protection Fund. All fees and  
25 penalties collected by the Department pursuant to this Act  
26 shall be deposited into the Wetlands Protection Fund, which  
27 is hereby created as a special fund in the State Treasury.  
28 In addition to any moneys that may be appropriated from the  
29 General Revenue Fund, the Illinois General Assembly shall  
30 appropriate moneys in the Wetlands Protection Fund to the  
31 Department in amounts deemed necessary to implement this Act.

32 Section 95. The State Finance Act is amended by adding

1 Section 5.595 as follows:

2 (30 ILCS 105/5.595 new)

3 Sec. 5.595. The Wetlands Protection Fund.

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

6 Section 99. Effective date. This Act takes effect upon  
7 becoming law.