

1 AMENDMENT TO HOUSE BILL 422

2 AMENDMENT NO. _____. Amend House Bill 422 by replacing
3 the title with the following:

4 "AN ACT concerning wetlands."; and

5 by replacing everything after the enacting clause with the
6 following:

7 "Section 1. Short title. This Act may be cited as the
8 Wetlands Protection Act.

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

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

14 (a) "ADID" means those aquatic sites identified by the
15 United States Environmental Protection Agency and the United
16 States Army Corps of Engineers as areas generally unsuitable
17 for disposal of dredged or fill material in accordance with
18 40 C.F.R. Part 230.80.

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

1 (c) "Agency" means the Illinois Environmental Protection
2 Agency.

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

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

7 (f) "Bog" means a peat-accumulating wetland that has no
8 significant inflows or outflows and supports acidophilic
9 mosses, particularly sphagnum, resulting in highly acidic
10 conditions.

11 (g) "Commencing such a regulated activity" means any
12 steps taken in preparation of conducting a regulated activity
13 that may impact the affected property, such as cutting,
14 filling, pumping of water, and earth movement.

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

16 (i) "Contiguous wetland" means a wetland that is
17 delineated on the affected property and extends beyond the
18 boundary of that property.

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

31 (k) "Corps of Engineers" or "COE" means the United
32 States Army Corps of Engineers.

33 (l) "Cypress swamp" means forested, permanent or
34 semi-permanent bodies of water, with species assemblages

1 characteristic of the Gulf and Southeastern Coastal Plains,
2 including bald cypress, which are restricted to extreme
3 southern Illinois.

4 (m) "Department" means the Illinois Department of
5 Natural Resources.

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

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

9 (p) "Flatwoods" means an area of forest or savanna on
10 level or nearly level ground, with an impermeable or slowly
11 permeable soil layer, resulting in a shallow perched water
12 table and where plants and animals are adapted to seasonal
13 fluctuation between wet and dry conditions. Characteristic
14 vegetation in a flatwoods includes at least 3 of the
15 following species: black ash, button bush, white oak, swamp
16 white oak, pin oak, post oak, black jack oak, black gum,
17 winterberry, lowbush blueberry, stout wood reed, cinnamon
18 fern, Carex muskingumensis, Canada mayflower, partridge
19 berry, and purple fringed orchid.

20 (q) "Floristic quality index" means an index calculated
21 using the Floristic Quality Assessment Method of assessing
22 floristic integrity (or quality) by summing the numerical
23 quality ratings of all plant species present then dividing
24 the total by the number of native species present (mean
25 coefficient of conservatism) or by the square root of the
26 number of native species (floristic quality index). (Taft,
27 J.B., G.S. Wilhelm, D.M. Ladd, and L.A. Masters. 1997.
28 Floristic quality assessment for vegetation in Illinois, a
29 method for assessing vegetation integrity. *Erigenia* 15:
30 3-95.)

31 (r) "Incidentally created" means created as a result of
32 any normal or routine activity coincidental with the conduct
33 of legitimate business enterprises, except that a wetland or
34 depression created as mitigation for any activity affecting

1 wetlands is not "incidentally created."

2 (s) "Incidental fallback" means the redeposit of small
3 volumes of dredged material that is incidental to excavation
4 activity in waters of the State when such material falls back
5 to substantially the same place as the initial removal.

6 (t) "Isolated wetlands" means those areas that are
7 inundated or saturated by surface or ground water at a
8 frequency or duration sufficient to support, and that under
9 normal circumstances do support, a prevalence of vegetation
10 typically adapted for life in saturated soil conditions, and
11 that are not regulated under the federal Clean Water Act.

12 (u) "Panne" means wet interdunal flats located near Lake
13 Michigan.

14 (v) "Person" means an individual, partnership,
15 co-partnership, firm, company, limited liability company,
16 corporation, association, joint stock company, trust, estate,
17 political subdivision, State agency, or other legal entity,
18 or its legal representative, agent, or assigns.

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

32 (x) "Regulated activity" means the discharge of dredged
33 or fill material into a wetland, the drainage of a wetland,
34 or excavation of a wetland that results in more than

1 incidental fallback.

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

9 (z) "Upland" means non-wetland, when used to describe a
10 particular land use, or non-hydric, when used to describe a
11 soil type.

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

17 Section 20. Exemptions.

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

22 (1) Normal farming, silviculture, and ranching
23 activities such as plowing, seeding, cultivating, minor
24 drainage, harvesting for the production of food, fiber,
25 and forest products, or upland soil and water
26 conservation practices.

27 (2) Maintenance, including emergency reconstruction
28 of recently damaged parts, of currently serviceable
29 structures such as dikes, dams, levees, groins, riprap,
30 breakwaters, causeways, and bridge abutments or
31 approaches, and transportation structures.

32 (3) Construction or maintenance of farm or stock
33 ponds or irrigation canals or ditches, or the maintenance

1 of drainage ditches.

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

5 (5) Construction or maintenance of farm roads or
6 forest roads, or temporary roads for moving mining
7 equipment, where such roads are constructed and
8 maintained, in accordance with best management practices,
9 to assure that flow and circulation patterns and chemical
10 and biological characteristics of the wetland are not
11 impaired, that the reach of the wetland is not reduced,
12 and that any adverse effect on the aquatic environment
13 will be otherwise minimized.

14 (6) Except for Class IA and Class IB wetlands,
15 activities for the placement of pilings for linear
16 projects, such as bridges, elevated walkways, and power
17 line structures in accordance with best management
18 practices, to assure that the flow and circulation
19 patterns and chemical and biological characteristics of
20 the wetland are not impaired, that the reach of the
21 wetland is not reduced, and that any adverse effect on
22 the aquatic environment will be otherwise minimized.

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

26 (8) Repair and maintenance of existing buildings,
27 facilities, lawns, and ornamental plantings.

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

31 (10) Application of media, including deicing media,
32 on the surface of existing roads for purposes of public
33 safety.

34 (11) Non-surface disturbing surveys and

1 investigations for construction, planning, maintenance,
2 or location of environmental resources.

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

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

24 (c) The following are not isolated wetlands for purposes
25 of this Act:

26 (1) Waste treatment systems, including treatment
27 ponds or lagoons, designed to comply with water quality
28 standards of the State or to remediate a site in
29 accordance with an approved Agency program, and former
30 waste treatment systems that have ceased operation less
31 than 33 years prior to commencement of the proposed
32 activity or which are undergoing remediation in
33 accordance with an approved Agency program.

34 (2) A drainage or irrigation ditch.

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

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

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

26 (6) Stormwater or spill management systems,
27 including retention and detention basins, ditches and
28 channels, and former stormwater or spill management
29 systems that have ceased operation less than 33 years
30 prior to commencement of the proposed activity or which
31 are undergoing remediation in accordance with an approved
32 Agency program.

33 (7) Waters that undergo mining activities conducted
34 pursuant to a federal, State, regional, or local permit

1 that requires the reclamation of the affected wetlands if
2 the reclamation will be completed within a reasonable
3 period of time after completion of activities at the site
4 and, upon completion of such reclamation, the wetlands
5 will support functions generally equivalent to the
6 functions supported by the wetlands at the time of
7 commencement of such activities.

8 (8) Prior converted cropland.

9 Section 25. Applicability. Until June 30, 2007, the
10 requirements of this Act apply to all isolated wetlands as
11 that term is defined in this Act. In the event that an
12 isolated wetland ceases to meet that definition because it
13 becomes subject to regulation under the federal Clean Water
14 Act, such wetland shall no longer be subject to the
15 provisions of this Act.

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

21 The Department on behalf of the State of Illinois may
22 enter into written delegation agreements with the Corps of
23 Engineers under which it may assume all or portions of COE
24 authority under the federal Clean Water Act. Such delegation
25 agreements shall provide, at a minimum, that all delineation,
26 classification, notification, and permitting requirements
27 shall be at least as stringent as those contained in this
28 Act.

29 Section 30. Wetlands delineation, classification,
30 notification, permits. The requirements of this Section
31 apply upon the adoption of rules under Section 45(c) of this
32 Act, or 270 days from the effective date of this Act,

1 whichever occurs first.

2 (a) The procedures and regulatory criteria for the
3 delineation, classification, notification, and permitting for
4 wetlands shall be conducted in accordance with the provisions
5 of this Section.

6 (b) Any person who intends to conduct a regulated
7 activity within the State may request a determination from
8 the Department as to the existence, location, and surface
9 area of any wetlands on or contiguous to the affected
10 property. Nothing in this Section shall require the person
11 to seek such a determination; however, failure to seek and
12 obtain a determination shall not be a defense against a
13 violation of this Act.

14 The person seeking a determination shall provide the
15 Department with sufficient information to render such a
16 determination. Such information shall include a wetland
17 delineation made in accordance with the COE Wetlands
18 Delineation Manual, Technical Report Y-87-1. Delineation of
19 the portion of a contiguous wetland not on the affected
20 property shall be made to the extent reasonably possible, and
21 methods other than physical onsite evaluations shall be
22 considered by the Department.

23 The Department shall provide notice to the applicant as
24 to whether a submitted application is complete. Unless the
25 Department notifies the applicant that the application is
26 incomplete within 15 days of receipt of the application, the
27 application shall be deemed complete. The Department may
28 request additional information as needed to make the
29 completeness determination.

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

1 If the Department determines that there are no wetlands
2 on the affected property, any otherwise regulated activity
3 conducted on the property shall not be subject to the
4 provisions of this Act.

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

9 Any determination of a wetland by the Department is a
10 final decision for purposes of appeal.

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

19 The person seeking a classification shall provide the
20 Department with sufficient information to render such a
21 classification. Such information shall include a wetland
22 delineation made in accordance with the COE Wetlands
23 Delineation Manual, Technical Report Y-87-1.

24 Unless the Department notifies the applicant that the
25 application is incomplete within 15 days of receipt of the
26 application, the application shall be deemed complete. The
27 Department may request additional information as needed to
28 make the completeness determination. The Department shall,
29 upon receipt of a complete classification request, provide
30 the person, within 30 days, with a classification of wetlands
31 located on or contiguous to the affected property. If the
32 Department fails to provide the person with a classification
33 within 30 days, the classification requested by the person
34 shall be deemed granted.

1 Wetlands shall be classified as follows:

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

- 4 (A) the wetland is or encompasses a bog;
- 5 (B) the wetland is or encompasses a fen;
- 6 (C) the wetland is or encompasses a panne;
- 7 (D) the wetland is or encompasses a cypress
8 swamp;

9 (E) the wetland is or encompasses a flatwoods;

10 (F) the wetland is or encompasses a Category I
11 Illinois Natural Areas Inventory Site, provided that
12 the Department shall disclose within 5 working days
13 of a request from an applicant, a prospective
14 applicant, or a qualified professional on behalf of
15 an applicant or a prospective applicant whether a
16 site identified by latitude and longitude includes a
17 Category I Illinois Natural Areas Inventory Site; or

18 (G) a threatened or endangered species has
19 been identified in the wetland.

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

22 (A) is or encompasses an ADID site;

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

32 (C) has a Floristic Quality Index (FQI) which
33 is equal to or greater than 20 or a mean coefficient
34 of conservatism (Mean C) equal to or greater than

1 3.5, determined in accordance with rules adopted by
2 the Department.

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

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

8 (A) the wetland is not a Class IA or Class
9 IB wetland; and

10 (B) the total size of the wetland, including
11 contiguous areas, is

12 (i) less than 0.25 acre, or

13 (ii) less than 0.5 acre if the wetland is
14 in a county that does not have authority to
15 establish a stormwater management program under
16 Section 5-1062 of the Counties Code and the
17 wetland is in or contiguous to agricultural
18 land.

19 (d) Subject to the provisions of Section 40 regarding
20 general permits, no person may conduct or cause to be
21 conducted a regulated activity within or affecting a wetland
22 in such a manner that the biological or hydrological
23 integrity of the wetland is impaired within the scope of this
24 Act, except in accordance with the terms of an individual
25 permit issued by the Department or authorization to proceed
26 as applicable under this Section.

27 (1) Class IA Wetlands:

28 (A) A permit to conduct a regulated activity
29 affecting a Class IA wetland within the scope of
30 this Act shall be granted if documentation is
31 submitted that demonstrates that complete avoidance
32 of impacts to the Class IA wetland precludes all
33 economic use of the entire parcel and that no
34 practicable alternative to wetland modification

1 exists.

2 Based upon a review of the submitted
3 documentation and any other available resources, the
4 Department shall make a determination as to whether
5 the proposed modification represents the least
6 amount of wetland impact required to restore an
7 economic use to the upland portion of the parcel.

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

15 The Director, for good cause shown and on a
16 case-by-case basis, may authorize an upward or
17 downward departure from the mitigation ratio
18 otherwise required under this subdivision (d)(1),
19 but for a Class IA wetland the Director shall
20 require a mitigation ration of at least 4:1 and
21 shall not require a mitigation ratio greater than
22 5:1.

23 (B) No permit under this subdivision (d)(1)
24 may be issued by the Department without a public
25 notice and a public hearing.

26 (2) Class IB Wetlands:

27 (A) A permit to conduct a regulated activity
28 affecting a Class IB wetland within the scope of
29 this Act shall be granted if documentation is
30 submitted that demonstrates that no practicable
31 alternative to wetland modification exists.

32 Based upon a review of the submitted
33 documentation and any other available resources, the
34 Department shall make a determination as to whether

1 the proposed modification constitutes the least
2 amount of wetland impact practicable and whether a
3 permit should be granted.

4 Wetland losses shall be mitigated at a ratio of
5 3:1 and shall be mitigated in kind and within the
6 same watershed as the impacted area, restoring both
7 the type and functions of the wetlands that will be
8 affected by the regulated activity.

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

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

25 (3) Class II Wetlands:

26 (A) A permit to conduct a regulated activity
27 affecting a Class II wetland within the scope of
28 this Act shall be granted if documentation is
29 submitted demonstrating that no reasonable
30 alternative to wetland modification exists.

31 Based upon a review of the submitted
32 documentation and any other available resources, the
33 Department shall make a determination as to whether
34 the proposed modification constitutes the least

1 amount of wetland impact practicable and whether a
2 permit should be granted.

3 Wetland losses shall be mitigated at a ratio of
4 1.5:1 and shall be mitigated in kind and within the
5 same watershed as the impacted area, restoring both
6 the type and functions of the wetland that will be
7 affected by the regulated activity.

8 (B) No permit under this subdivision (d)(3)
9 may be issued by the Department without a public
10 notice and opportunity for public hearing being
11 afforded. The Department shall hold a public
12 hearing concerning a permit application if the
13 proposed activity may have a significant impact upon
14 wetland resources or if the Department determines
15 that a public hearing is otherwise appropriate.

16 (4) Class III Wetlands:

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

21 (B) Such notification shall include (1) a
22 sketch that reasonably depicts the area that will be
23 affected by the regulated activity, including
24 wetland and water boundaries for the areas affected
25 and the existing land uses and structures; (2) a
26 description of the proposed activity, including its
27 purpose; (3) a description of any public benefit to
28 be derived from the proposed project; and (4) the
29 names and addresses of adjacent landowners as
30 determined by the current tax assessment rolls.

31 (C) Upon receipt of a notification of intent,
32 the Department shall verify that the regulated
33 activity will affect a wetland that it previously
34 classified as Class III.

1 If the Department so verifies, the Department
2 shall send the person, within 30 days of the receipt
3 of such notification, a response stating that the
4 regulated activity may proceed.

5 If the Department cannot so verify, the
6 Department shall send the person, within 30 days of
7 the receipt of such notification, a response stating
8 that no classification has been made by the
9 Department, or that a Classification of IA, IB, or
10 II was made and that the regulated activity may not
11 proceed until either a classification is made
12 pursuant to this Section, or a permit is obtained,
13 as applicable.

14 Failure of the Department to respond to a
15 notification shall be deemed an authorization to
16 proceed.

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

21 (e) Within 15 days of the receipt of a permit
22 application, the Department shall determine if an application
23 is complete. To be deemed complete, an application must
24 provide all information, as requested in Department
25 application forms, sufficient to evaluate the application.
26 Such information shall include, at a minimum: (1) a map of
27 the area that will be affected by the activity, including
28 wetland and water boundaries for the areas affected and the
29 existing uses and structures. Such information shall include
30 a wetland delineation made in accordance with the COE
31 Wetlands Delineation Manual, Technical Report Y-87-1; (2) a
32 description of the proposed activity, including its purpose,
33 the location and dimensions of any structures, grading or
34 fills, drainage, roads, sewers and water supply, parking

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

22 (f) The Department shall not issue a permit pursuant to
23 this Section unless the Agency has certified that the
24 proposed activity will not cause or contribute to a violation
25 of any State water quality standard. The Agency will be
26 deemed to have certified that the proposed activity will not
27 cause or contribute to a violation of any State water quality
28 standard if it has not declined in writing to so certify
29 within 80 days of the filing of the application unless the
30 Agency has requested that the applicant supply more
31 information relevant to assessing the water quality impacts
32 of the proposed activity. If a public hearing is held on the
33 application, however, this period shall be extended by 45
34 days.

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

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

20 (i) The Department shall adopt rules to carry out the
21 provisions of this Section in accordance with Section 45 of
22 this Act.

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

27 Section 40. General permits.

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

32 (b) Permits for all categories of activities, subject to

1 the same permit limitations and conditions, that are the
2 subject of a nationwide permit issued by the Corps of
3 Engineers in effect on the date of the enactment of this Act,
4 are adopted as general permits covering regulated activities
5 subject to this Act.

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

21 Specifically, the Department must adopt general permits
22 for each of the following:

23 (1) The construction or maintenance of access roads
24 for utility lines, substations or related equipment or
25 facilities.

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

29 (d) No general permit adopted under this Section shall
30 be for a period of more than 5 years after the date of its
31 issuance. A general permit may be revoked or modified by the
32 Department if, after opportunity for public hearing, the
33 Department determines that the activities authorized by the
34 general permit have an adverse impact on the environment,

1 cause or contribute to a violation of State water quality
2 standards, or are more appropriately authorized by individual
3 permits.

4 (e) Compliance with the terms of a general permit shall
5 be deemed compliance with the provisions of this Act if the
6 applicant (i) files a notice of intent to be covered under
7 the provisions of the general permit in accordance with
8 regulations adopted pursuant to this Act and (ii) files any
9 reports required by the general permit.

10 (f) The Department shall respond to a notice of intent
11 to proceed under a general permit issued under this Section
12 within 30 days after the Department receives the notice. In
13 the event that the Department fails to respond to a notice of
14 intent to proceed within 30 days as required by this
15 subsection (f), the person submitting the notice shall be
16 deemed fully authorized to conduct the activities described
17 in the notice under the terms and conditions of the
18 applicable general permit.

19 Section 45. Wetlands Advisory Committee; duties; rules

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

23 The Committee shall include 7 members selected from among
24 the following organizations:

- 25 (1) The Illinois State Chamber of Commerce.
- 26 (2) The Illinois Association of Realtors.
- 27 (3) The Chemical Industry Council of Illinois.
- 28 (4) The Consulting Engineers Council of Illinois.
- 29 (5) The Illinois Association of Aggregate
30 Producers.
- 31 (6) The Illinois Association of Home Builders.
- 32 (7) The Illinois Energy Association.
- 33 (8) The Illinois Manufacturers Association.

1 (9) The National Solid Waste Management
2 Association.

3 (10) The Illinois Farm Bureau.

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

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

11 The Committee shall include 3 other members as determined
12 by the Governor.

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

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

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

23 The Department shall provide reasonable and necessary
24 staff support to the Committee.

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

31 (c) Within 6 months after the effective date of this
32 Act, the Department, after consideration of the
33 recommendations of the Committee (or if the Committee for any
34 reason has not made recommendations, the Department itself),

1 shall adopt any rules required by this Act prescribing
2 procedures and standards for its administration. Nothing in
3 this Act shall preclude, at any time, the recommendation,
4 proposal, or adoption of any other rules deemed necessary for
5 the orderly implementation of this Act.

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

12 (e) The Committee shall assist counties having
13 stormwater management authority under Section 5-1062 or
14 5-1062.1 of the Counties Code in coordinating and unifying
15 stormwater management regulations adopted thereto, as
16 required in Section 65(f) of this Act.

17 Section 50. Appeal of final Department decision;
18 judicial review.

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

29 (b) A person aggrieved by a final decision made pursuant
30 to this Act may seek judicial review of the decision pursuant
31 to the Administrative Review Law.

32 Section 55. Investigation; enforcement.

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

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

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

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

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

30 (3) Any economic benefits accrued by the violator
31 through the violation.

32 (4) The amount of monetary penalty which will serve
33 to deter further violations by the violator and to
34 otherwise aid in enhancing voluntary compliance with this

1 Act by the violator and other persons similarly subject
2 to this Act.

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

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

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

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

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

1 does not comply by restoring the wetland within a reasonable
2 time, the Department may restore the wetland to its condition
3 prior to the violation and the violator shall be liable to
4 the Department for the cost of restoration.

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

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

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

15 (k) Enforcement actions under this Section may be
16 concurrent or separate.

17 Section 60. Fees.

18 (a) The Department by rule shall adopt a minimal
19 processing fee not exceeding \$250 for notification regarding
20 Class III Wetlands and for processing a notice of intent to
21 proceed under a general permit.

22 (b) The Department by rule shall establish a schedule of
23 permit fees for single regulated activities in Class IA,
24 Class IB, and Class II wetlands.

25 (c) Fees shall be set at levels that allow the wetlands
26 program to operate financially on a self-sustaining basis.
27 The Department shall annually review its fee schedule in
28 order to maintain its fees at a self-sustaining level.

29 Section 65. County authority.

30 (a) Nothing in this Act preempts or denies the right of
31 any governmental body with a stormwater management program
32 under Section 5-1062 of the Counties Code to control or

1 regulate activities in any wetlands within the jurisdiction
2 of the governmental body, subject to subsection (b).

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

8 (1) provides wetlands protection consistent with
9 the intent of this Act; and

10 (2) has an administration and qualified staff to
11 implement the governmental body's stormwater management
12 program.

13 (c) Activities within or affecting wetlands that occur
14 within the jurisdiction of the governmental body with a
15 stormwater management program under Section 5-1062 of the
16 Counties Code that meets the provisions of subdivisions
17 (b)(1) and (b)(2) of this Section are exempt from the
18 requirements of this Act, but must meet those county
19 stormwater management requirements, at a minimum. This
20 exemption also applies during the period that the Department
21 is considering a county's request under subsection (b).
22 Until a request has been submitted under subsection (b), the
23 requirements of this Act shall apply.

24 (d) The Director may rescind recognition status in the
25 event that the governmental body with a stormwater management
26 program under Section 5-1062 of the Counties Code no longer
27 meets the provisions of subdivisions (b)(1) and (b)(2) of
28 this Section.

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

33 (f) Counties having authority under Section 5-1062 of
34 the Counties Code to adopt a stormwater management program

1 shall seek with the assistance of the Northeastern Illinois
2 Planning Commission to coordinate and unify regulations
3 adopted pursuant thereto.

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

6 Section 70. Wetlands Protection Fund. All fees and
7 penalties collected by the Department pursuant to this Act
8 shall be deposited into the Wetlands Protection Fund, which
9 is hereby created as a special fund in the State Treasury.
10 In addition to any moneys that may be appropriated from the
11 General Revenue Fund, the Illinois General Assembly shall
12 appropriate moneys in the Wetlands Protection Fund to the
13 Department in amounts deemed necessary to implement this Act.

14 Section 95. The State Finance Act is amended by adding
15 Section 5.595 as follows:

16 (30 ILCS 105/5.595 new)

17 Sec. 5.595. The Wetlands Protection Fund.

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

20 Section 99. Effective date. This Act takes effect upon
21 becoming law."