

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) "Floristic quality index" means an index calculated
10 using the Floristic Quality Assessment Method of assessing
11 floristic integrity (or quality) by summing the numerical
12 quality ratings of all plant species present then dividing
13 the total by the number of native species present (mean
14 coefficient of conservatism) or by the square root of the
15 number of native species (floristic quality index). (Taft,
16 J.B., G.S. Wilhelm, D.M. Ladd, and L.A. Masters. 1997.
17 Floristic quality assessment for vegetation in Illinois, a
18 method for assessing vegetation integrity. *Erigenia* 15:
19 3-95.)

20 (q) "Incidentally created" means created as a result of
21 any normal or routine activity coincidental with the conduct
22 of legitimate business enterprises, except that a wetland or
23 depression created as mitigation for any activity affecting
24 wetlands is not "incidentally created."

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

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

1 (t) "Panne" means wet interdunal flats located near Lake
2 Michigan.

3 (u) "Person" means an individual, partnership,
4 co-partnership, firm, company, limited liability company,
5 corporation, association, joint stock company, trust, estate,
6 political subdivision, State agency, or other legal entity,
7 or its legal representative, agent, or assigns.

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

21 (w) "Regulated activity" means the discharge of dredged
22 or fill material into a wetland, the drainage of a wetland,
23 or excavation of a wetland that results in more than
24 incidental fallback.

25 (x) "Threatened or endangered species" means those
26 species that have been designated as threatened or endangered
27 by the Illinois Endangered Species Protection Board pursuant
28 to the Illinois Endangered Species Protection Act and those
29 species that have been designated as threatened or endangered
30 by the U.S. Fish and Wildlife Service pursuant to the
31 Endangered Species Act.

32 (y) "Upland" means non-wetland, when used to describe a
33 particular land use, or non-hydric, when used to describe a
34 soil type.

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

6 Section 20. Exemptions.

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

11 (1) Normal farming, silviculture, and ranching
12 activities such as plowing, seeding, cultivating, minor
13 drainage, harvesting for the production of food, fiber,
14 and forest products, or upland soil and water
15 conservation practices.

16 (2) Maintenance, including emergency reconstruction
17 of recently damaged parts, of currently serviceable
18 structures such as dikes, dams, levees, groins, riprap,
19 breakwaters, causeways, and bridge abutments or
20 approaches, and transportation structures.

21 (3) Construction or maintenance of farm or stock
22 ponds or irrigation canals or ditches, or the maintenance
23 of drainage ditches.

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

27 (5) Construction or maintenance of farm roads or
28 forest roads, or temporary roads for moving mining
29 equipment, where such roads are constructed and
30 maintained, in accordance with best management practices,
31 to assure that flow and circulation patterns and chemical
32 and biological characteristics of the wetland are not
33 impaired, that the reach of the wetland is not reduced,

1 and that any adverse effect on the aquatic environment
2 will be otherwise minimized.

3 (6) Except for Class IA and Class IB wetlands,
4 activities for the placement of pilings for linear
5 projects, such as bridges, elevated walkways, and power
6 line structures in accordance with best management
7 practices, to assure that the flow and circulation
8 patterns and chemical and biological characteristics of
9 the wetland are not impaired, that the reach of the
10 wetland is not reduced, and that any adverse effect on
11 the aquatic environment will be otherwise minimized.

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

15 (8) Repair and maintenance of existing buildings,
16 facilities, lawns, and ornamental plantings.

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

20 (10) Application of media, including deicing media,
21 on the surface of existing roads for purposes of public
22 safety.

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

26 (12) Wetland management practices on lands that are
27 used primarily for the management of waterfowl, other
28 migratory water birds, or furbearers if such practices
29 took place on these lands prior to the effective date of
30 this Act. This includes vegetation management that may
31 include the use of fire, chemical, or mechanical
32 (hydro-axe, bulldozer, rone disk, or similar equipment)
33 removal of invading woody or herbaceous vegetation to
34 maintain a preferred successional stage. Use of

1 chemicals must be by a certified applicator and chemicals
2 must be registered for appropriate use. Clearing or
3 removal of woody vegetation shall be limited to 4-inch
4 dbh (diameter at breast height) or smaller material for
5 the purpose of establishing or maintaining the
6 successional stage of a wetland as an herbaceous wetland
7 vegetated by native moist soil plants or selected
8 wildlife food plants.

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

13 (c) The following are not isolated wetlands for purposes
14 of this Act:

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

23 (2) A drainage or irrigation ditch.

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

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

31 (5) Except for isolated wetlands created pursuant
32 to mining activities regulated in accordance with item

33 (7) below, an incidentally created water-filled
34 depression, unless: (i) ownership of the property

1 containing the depression has been transferred away from
2 the party who incidentally created the water-filled
3 depression, (ii) that ownership transfer occurred more
4 than 12 months prior to the commencement of an otherwise
5 regulated activity, (iii) the use of the property has
6 changed from the use that existed when the property was
7 transferred from the party who incidentally created the
8 water-filled depression, and (iv) the resulting body of
9 water meets the definition in this Act of an isolated
10 wetland; or if the ownership of the property has not been
11 transferred from the party who created the incidentally
12 created water-filled depression, the depression was not
13 created more than 33 years before the date the
14 application is received by the Department.

15 (6) Stormwater or spill management systems,
16 including retention and detention basins, ditches and
17 channels, and former stormwater or spill management
18 systems that have ceased operation less than 33 years
19 prior to commencement of the proposed activity or which
20 are undergoing remediation in accordance with an approved
21 Agency program.

22 (7) Waters that undergo mining activities conducted
23 pursuant to a federal, State, regional, or local permit
24 that requires the reclamation of the affected wetlands if
25 the reclamation will be completed within a reasonable
26 period of time after completion of activities at the site
27 and, upon completion of such reclamation, the wetlands
28 will support functions generally equivalent to the
29 functions supported by the wetlands at the time of
30 commencement of such activities.

31 (8) Prior converted cropland.

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

1 Section 25. Applicability. Until June 30, 2007, the
2 requirements of this Act apply to all isolated wetlands as
3 that term is defined in this Act. In the event that an
4 isolated wetland ceases to meet that definition because it
5 becomes subject to regulation under the federal Clean Water
6 Act, such wetland shall no longer be subject to the
7 provisions of this Act.

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

13 The Department on behalf of the State of Illinois may
14 enter into written delegation agreements with the Corps of
15 Engineers under which it may assume all or portions of COE
16 authority under the federal Clean Water Act. Such delegation
17 agreements shall provide, at a minimum, that all delineation,
18 classification, notification, and permitting requirements
19 shall be at least as stringent as those contained in this
20 Act.

21 Section 30. Wetlands delineation, classification,
22 notification, permits. The requirements of this Section
23 apply upon the adoption of rules under Sections 45(c) and 60
24 of this Act, or 270 days from the effective date of this Act,
25 whichever occurs first.

26 (a) The procedures and regulatory criteria for the
27 delineation, classification, notification, and permitting for
28 wetlands shall be conducted in accordance with the provisions
29 of this Section.

30 (b) Any person who intends to conduct a regulated
31 activity within the State may request a determination from
32 the Department as to the existence, location, and surface
33 area of any wetlands on or contiguous to the affected

1 property. Nothing in this Section shall require the person
2 to seek such a determination; however, failure to seek and
3 obtain a determination shall not be a defense against a
4 violation of this Act.

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

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

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

26 If the Department determines that there are no wetlands
27 on the affected property, any otherwise regulated activity
28 conducted on the property shall not be subject to the
29 provisions of this Act.

30 If the Department determines that there is one or more
31 wetlands on or contiguous to the affected property, the
32 person may apply to the Department for classification of such
33 wetlands.

34 Any determination of a wetland by the Department is a

1 final decision for purposes of appeal.

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

10 The person seeking a classification shall provide the
11 Department with sufficient information to render such a
12 classification. Such information shall include a wetland
13 delineation made in accordance with the COE Wetlands
14 Delineation Manual, Technical Report Y-87-1.

15 Unless the Department notifies the applicant that the
16 application is incomplete within 15 days of receipt of the
17 application, the application shall be deemed complete. The
18 Department may request additional information as needed to
19 make the completeness determination. The Department shall,
20 upon receipt of a complete classification request, provide
21 the person, within 30 days, with a classification of wetlands
22 located on or contiguous to the affected property. If the
23 Department fails to provide the person with a classification
24 within 30 days, the classification requested by the person
25 shall be deemed granted.

26 Wetlands shall be classified as follows:

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

- 29 (A) the wetland is or encompasses a bog;
- 30 (B) the wetland is or encompasses a fen;
- 31 (C) the wetland is or encompasses a panne;
- 32 (D) the wetland is or encompasses a cypress
33 swamp;
- 34 (E) the wetland is or encompasses a Category I

1 Illinois Natural Areas Inventory Site, provided that
2 the Department shall disclose within 5 working days
3 of a request from an applicant, a prospective
4 applicant, or a qualified professional on behalf of
5 an applicant or a prospective applicant whether a
6 site identified by latitude and longitude includes a
7 Category I Illinois Natural Areas Inventory Site; or
8 (F) a threatened or endangered species has
9 been identified in the wetland.

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

12 (A) is or encompasses an ADID site;

13 (B) is or encompasses a Category VI Illinois
14 Natural Area Inventory Site or regional equivalent;
15 provided that the Department shall disclose within 5
16 working days of a request from an applicant, a
17 prospective applicant, or a qualified professional
18 on behalf of an applicant or a prospective applicant
19 whether a site identified by latitude and longitude
20 includes a Category VI Illinois Natural Areas
21 Inventory Site; or

22 (C) has a Floristic Quality Index (FQI) which
23 is equal to or greater than 20 or a mean coefficient
24 of conservatism (Mean C) equal to or greater than
25 3.5, determined in accordance with rules adopted by
26 the Department.

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

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

32 (A) the wetland is not a Class IA or Class
33 IB wetland; and

34 (B) the total size of the wetland, including

1 contiguous areas, is

2 (i) less than 0.25 acre, or

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

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

16 (1) Class IA Wetlands:

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

25 Based upon a review of the submitted
26 documentation and any other available resources, the
27 Department shall make a determination as to whether
28 the proposed modification represents the least
29 amount of wetland impact required to restore an
30 economic use to the upland portion of the parcel.

31 Wetland losses shall be mitigated at a ratio of
32 4.5:1 and shall be mitigated in kind and within the
33 same watershed as the impacted area restoring, to
34 the maximum degree practicable as determined by the

1 Department, both the type and functions of the
2 wetland that will be affected by the regulatory
3 activity.

4 The Director, for good cause shown and on a
5 case-by-case basis, may authorize an upward or
6 downward departure from the mitigation ratio
7 otherwise required under this subdivision (d)(1),
8 but for a Class IA wetland the Director shall
9 require a mitigation ration of at least 4:1 and
10 shall not require a mitigation ratio greater than
11 5:1.

12 (B) No permit under this subdivision (d)(1)
13 may be issued by the Department without a public
14 notice and a public hearing.

15 (2) Class IB Wetlands:

16 (A) A permit to conduct a regulated activity
17 affecting a Class IB wetland within the scope of
18 this Act shall be granted if documentation is
19 submitted that demonstrates that no practicable
20 alternative to wetland modification exists.

21 Based upon a review of the submitted
22 documentation and any other available resources, the
23 Department shall make a determination as to whether
24 the proposed modification constitutes the least
25 amount of wetland impact practicable and whether a
26 permit should be granted.

27 Wetland losses shall be mitigated at a ratio of
28 3:1 and shall be mitigated in kind and within the
29 same watershed as the impacted area, restoring both
30 the type and functions of the wetlands that will be
31 affected by the regulated activity.

32 The Director, for good cause shown and on a
33 case-by-case basis, may authorize an upward or
34 downward departure from the mitigation ratio

1 otherwise required under this subdivision (d)(2),
2 but for a Class IB wetland the Director shall
3 require a mitigation ration of at least 2.5:1 and
4 shall not require a mitigation ratio greater than
5 3.5:1.

6 (B) No permit under this subdivision (d)(2)
7 may be issued by the Department without a public
8 notice and opportunity for public hearing being
9 afforded. The Department shall hold a public
10 hearing concerning a permit application if the
11 proposed activity may have a significant impact upon
12 wetland resources or if the Department determines
13 that a public hearing is otherwise appropriate.

14 (3) Class II Wetlands:

15 (A) A permit to conduct a regulated activity
16 affecting a Class II wetland within the scope of
17 this Act shall be granted if documentation is
18 submitted demonstrating that no reasonable
19 alternative to wetland modification exists.

20 Based upon a review of the submitted
21 documentation and any other available resources, the
22 Department shall make a determination as to whether
23 the proposed modification constitutes the least
24 amount of wetland impact practicable and whether a
25 permit should be granted.

26 Wetland losses shall be mitigated at a ratio of
27 1.5:1 and shall be mitigated in kind and within the
28 same watershed as the impacted area, restoring both
29 the type and functions of the wetland that will be
30 affected by the regulated activity.

31 (B) No permit under this subdivision (d)(3)
32 may be issued by the Department without a public
33 notice and opportunity for public hearing being
34 afforded. The Department shall hold a public

1 hearing concerning a permit application if the
2 proposed activity may have a significant impact upon
3 wetland resources or if the Department determines
4 that a public hearing is otherwise appropriate.

5 (4) Class III Wetlands:

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

10 (B) Such notification shall include (1) a
11 sketch that reasonably depicts the area that will be
12 affected by the regulated activity, including
13 wetland and water boundaries for the areas affected
14 and the existing land uses and structures; (2) a
15 description of the proposed activity, including its
16 purpose; (3) a description of any public benefit to
17 be derived from the proposed project; and (4) the
18 names and addresses of adjacent landowners as
19 determined by the current tax assessment rolls.

20 (C) Upon receipt of a notification of intent,
21 the Department shall verify that the regulated
22 activity will affect a wetland that it previously
23 classified as Class III.

24 If the Department so verifies, the Department
25 shall send the person, within 30 days of the receipt
26 of such notification, a response stating that the
27 regulated activity may proceed.

28 If the Department cannot so verify, the
29 Department shall send the person, within 30 days of
30 the receipt of such notification, a response stating
31 that no classification has been made by the
32 Department, or that a Classification of IA, IB, or
33 II was made and that the regulated activity may not
34 proceed until either a classification is made

1 pursuant to this Section, or a permit is obtained,
2 as applicable.

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

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

10 (e) Within 15 days of the receipt of a permit
11 application, the Department shall determine if an application
12 is complete. To be deemed complete, an application must
13 provide all information, as requested in Department
14 application forms, sufficient to evaluate the application.
15 Such information shall include, at a minimum: (1) a map of
16 the area that will be affected by the activity, including
17 wetland and water boundaries for the areas affected and the
18 existing uses and structures. Such information shall include
19 a wetland delineation made in accordance with the COE
20 Wetlands Delineation Manual, Technical Report Y-87-1; (2) a
21 description of the proposed activity, including its purpose,
22 the location and dimensions of any structures, grading or
23 fills, drainage, roads, sewers and water supply, parking
24 lots, stormwater facilities, discharge of pollutants, and
25 onsite waste disposal; (3) a description of any public
26 benefit to be derived from the proposed project; and (4) the
27 names and addresses of adjacent landowners as determined by
28 the current tax assessment rolls. The Department application
29 forms shall be finalized and made available prior to the date
30 on which any application is required. The Department shall
31 provide notice to the applicant as to whether a submitted
32 application is complete. Unless the Department notifies the
33 applicant that the application is incomplete within 20 days
34 of receipt of the application, the application shall be

1 deemed complete. The Department may request additional
2 information as needed to make the completeness determination.
3 The Department may, to the extent practicable, provide the
4 applicant with a reasonable opportunity to correct
5 deficiencies prior to a final determination of completeness.
6 Within 90 days from the receipt of a complete application for
7 permit, the Department shall either issue or deny the permit
8 or issue it with conditions. If a public hearing is held on
9 the application, however, this period shall be extended by 45
10 days.

11 (f) The Department shall not issue a permit pursuant to
12 this Section unless the Agency has certified that the
13 proposed activity will not cause or contribute to a violation
14 of any State water quality standard. The Agency will be
15 deemed to have certified that the proposed activity will not
16 cause or contribute to a violation of any State water quality
17 standard if it has not declined in writing to so certify
18 within 80 days of the filing of the application unless the
19 Agency has requested that the applicant supply more
20 information relevant to assessing the water quality impacts
21 of the proposed activity. If a public hearing is held on the
22 application, however, this period shall be extended by 45
23 days.

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

29 (h) Any person may submit an application for an
30 after-the-fact permit to be issued under this Act, and the
31 Department is authorized to issue such an after-the-fact
32 permit if it determines that the activities covered by the
33 after-the-fact permit application were undertaken and
34 conducted in response to emergency circumstances where there

1 may be an imminent threat to persons, public infrastructure,
2 personal property, or uninterrupted utility service that made
3 it impracticable for the applicant to obtain prior
4 authorization under this Act to undertake and conduct such
5 activities. The applicant shall be required to demonstrate
6 that it provided notice to the Department of the emergency
7 circumstances as soon as reasonably possible following the
8 discovery of such circumstances.

9 (i) The Department shall adopt rules to carry out the
10 provisions of this Section in accordance with Section 45 of
11 this Act.

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

16 Section 40. General permits.

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

21 (b) Permits for all categories of activities, subject to
22 the same permit limitations and conditions, that are the
23 subject of a nationwide permit issued by the Corps of
24 Engineers in effect on the date of the enactment of this Act,
25 are adopted as general permits covering regulated activities
26 subject to this Act.

27 (c) The Department may adopt general permits covering
28 other activities that would be subject to the same permit
29 limitations and conditions, if it determines that the
30 activities in such category will cause only minimal adverse
31 environmental effects when performed separately, will have
32 only minimal cumulative adverse effect on the environment,

1 will not cause or contribute to a violation of State water
2 quality standards when performed separately, and will have
3 only a minimal cumulative adverse effect on water quality.
4 The Department may prescribe best management practices for
5 any general permit issued under this Section. The Department
6 shall consider any optional mitigation proposed by an
7 applicant in determining whether the net adverse
8 environmental effects of a proposed regulated activity are
9 minimal.

10 Specifically, the Department must adopt general permits
11 for each of the following:

12 (1) The construction or maintenance of access roads
13 for utility lines, substations or related equipment or
14 facilities.

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

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

27 (e) Compliance with the terms of a general permit shall
28 be deemed compliance with the provisions of this Act if the
29 applicant (i) files a notice of intent to be covered under
30 the provisions of the general permit in accordance with
31 regulations adopted pursuant to this Act and (ii) files any
32 reports required by the general permit.

33 (f) The Department shall respond to a notice of intent
34 to proceed under a general permit issued under this Section

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

8 Section 45. Wetlands Advisory Committee; duties; rules

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

12 The Committee shall include 5 members representing the
13 interests of business, industry, real estate, and
14 agriculture.

15 The Committee shall include 5 members selected from the
16 membership of environmental and conservation groups in the
17 State.

18 The Committee shall include 2 members representing
19 counties exercising authority under Section 5-1062 or
20 5-1062.1 of the Counties Code to establish stormwater
21 management programs.

22 The Committee shall include one member representing
23 municipalities.

24 The Committee shall include one member representing
25 building trades unions.

26 The Committee shall include 3 other members as determined
27 by the Governor.

28 The Director of Natural Resources, or his or her
29 designee, and the Director of the Illinois Environmental
30 Protection Agency, or his or her designee, shall be
31 non-voting members of the Committee.

32 The Committee shall biannually elect from its membership
33 a Chair, who shall not be an employee of the Illinois

1 Environmental Protection Agency or the Illinois Department of
2 Natural Resources.

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

5 The Department shall provide reasonable and necessary
6 staff support to the Committee.

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

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

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

28 (e) The Committee shall assist counties having
29 stormwater management authority under Section 5-1062 or
30 5-1062.1 of the Counties Code in coordinating and unifying
31 stormwater management regulations adopted thereto, as
32 required in Section 65(f) of this Act.

33 Section 50. Appeal of final Department decision;

1 judicial review.

2 (a) Any permit applicant who has been denied a permit in
3 whole or in part, and any person who participated in the
4 permit proceeding and who is aggrieved by a decision of the
5 Department to grant a permit in whole or in part, may appeal
6 the decision to the Director within 35 days of the permit
7 grant or denial. However, the 35-day period for appealing to
8 the Director may be extended by the applicant for a period of
9 time not to exceed 90 days by written notice provided to the
10 Director. In all such appeals, the burden of persuasion
11 shall be on the party appealing the Department's decision.

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

15 Section 55. Investigation; enforcement.

16 (a) In accordance with constitutional limitations, the
17 Department shall have authority to enter at all reasonable
18 times upon any private or public property for the purpose of
19 inspecting and investigating to ascertain possible violations
20 of this Act or of rules adopted hereunder, or of permits or
21 terms or conditions thereof.

22 (b) The civil penalties provided for in this Section may
23 be recovered in a civil action which may be instituted in a
24 court of competent jurisdiction. The State's Attorney of the
25 county in which the alleged violation occurred, or the
26 Attorney General, may, at the request of the Department or on
27 his or her own motion, institute a civil action in a court of
28 competent jurisdiction to recover civil penalties and to
29 obtain an injunction to restrain violations of the Act.

30 (c) Any person who violates any provision of this Act or
31 any rule adopted hereunder, or any permit or term or
32 condition thereof, shall be liable for a civil penalty of not
33 to exceed \$10,000 per day of violation; such penalties may be

1 made payable to the Wetlands Protection Fund and shall be
2 deposited into that Fund as provided in subsection (j). In
3 determining the appropriate civil penalty to be imposed under
4 this Section, the Court is authorized to consider any matters
5 of record in mitigation or aggravation of penalty, including
6 but not limited to the following factors:

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

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

12 (3) Any economic benefits accrued by the violator
13 through the violation.

14 (4) The amount of monetary penalty which will serve
15 to deter further violations by the violator and to
16 otherwise aid in enhancing voluntary compliance with this
17 Act by the violator and other persons similarly subject
18 to this Act.

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

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

25 (e) All final orders imposing civil penalties pursuant
26 to this Section shall prescribe the time for payment of such
27 penalties. If any such penalty is not paid within the time
28 prescribed, interest on such penalty at the rate set forth in
29 subsection (a) of Section 1003 of the Illinois Income Tax Act
30 shall be paid for the period from the date payment is due
31 until the date payment is received. However, if the time for
32 payment is stayed during the pendency of an appeal, interest
33 shall not accrue during such stay.

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

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

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

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

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

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

31 (k) Enforcement actions under this Section may be
32 concurrent or separate.

33 Section 60. Fees.

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

5 (1) a minimal processing fee for notification
6 regarding Class III Wetlands and for processing a notice
7 of intent to proceed under a general permit; and

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

10 (b) These fees shall be set at levels that allow the
11 wetlands program to operate financially on a self-sustaining
12 basis. The Department shall annually review the fees to
13 determine whether the wetlands program is operating
14 financially on a self-sustaining basis, and it may propose
15 any necessary changes in the fees to the Illinois Pollution
16 Control Board.

17 Section 65. County authority.

18 (a) Nothing in this Act preempts or denies the right of
19 any governmental body with a stormwater management program
20 under Section 5-1062 of the Counties Code to control or
21 regulate activities in any wetlands within the jurisdiction
22 of the governmental body.

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

28 (1) provides wetlands protection consistent with
29 the intent of this Act; and

30 (2) has an administration and qualified staff to
31 implement the governmental body's stormwater management
32 program.

33 (b-5) After consultation with the Department of Natural

1 Resources, the General Assembly finds and declares that the
2 stormwater management programs implemented by DuPage, Lake,
3 and Kane Counties under Section 5-1062 of the Counties Code,
4 as they exist at the time of the passage of this Act, meet
5 the requirements of subsection (b), and therefore they shall
6 be deemed to have received recognition and approval under
7 that subsection without further action by the Department.

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

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

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

30 (f) Counties having authority under Section 5-1062 of
31 the Counties Code to adopt a stormwater management program
32 shall seek with the assistance of the Northeastern Illinois
33 Planning Commission to coordinate and unify regulations
34 adopted pursuant thereto.

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

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

11 Section 95. The State Finance Act is amended by adding
12 Section 5.595 as follows:

13 (30 ILCS 105/5.595 new)

14 Sec. 5.595. The Wetlands Protection Fund.

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

17 Section 99. Effective date. This Act takes effect upon
18 becoming law."