

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

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

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

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

1 "Agency" means the Illinois Environmental Protection
2 Agency.

3 "Avoidance" means any action taken in a manner such that
4 a regulated activity will not occur.

5 "Board" means the Illinois Pollution Control Board.

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

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

14 "Committee" means the Illinois Wetlands Advisory
15 Committee.

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

19 "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 to have the
24 effect 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 the
28 land was a wetland, farmed wetland, or farmed-wetland pasture
29 and was neither highly erodible land nor highly erodible
30 cropland.

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

33 "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 and including bald cypress, and that are restricted to
3 extreme southern Illinois.

4 "Delegation agreement" means a written document executed
5 between the COE and the Agency that authorizes the Agency to
6 assume all of the COE's authority under the federal Clean
7 Water Act regarding activities in wetlands. Such delegation
8 agreement shall include federal funding sufficient to allow
9 the Agency to carry out its responsibilities under such
10 agreement.

11 "Director" means the Director of the Illinois
12 Environmental Protection Agency.

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

15 "Floristic quality index" means an index calculated using
16 the Floristic Quality Assessment Method of assessing
17 floristic integrity or quality.

18 "Incidental fallback" means the redeposit of small
19 volumes of dredged material that is incidental to excavation
20 activity in waters of the State when such material falls back
21 to substantially the same place as the initial removal.

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

27 "Isolated wetlands" means those areas that are inundated
28 or saturated by surface or ground water at a frequency or
29 duration sufficient to support, and that under normal
30 circumstances do support, a prevalence of vegetation
31 typically adapted for life in saturated soil conditions, and
32 that are not regulated under the federal Clean Water Act (33
33 U.S.C. 1251-1387).

34 "Panne" means wet interdunal flats located near Lake

1 Michigan.

2 "Person" means an individual, partnership,
3 co-partnership, firm, company, limited liability company,
4 corporation, association, joint stock company, trust, estate,
5 political subdivision, state agency, or other legal entity,
6 or their legal representative, agent, or assign.

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

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

24 "Threatened or endangered species" means those species
25 that have been designated as threatened or endangered by the
26 Illinois Endangered Species Protection Board pursuant to the
27 Illinois Endangered Species Protection Act and those species
28 that have been designated as threatened or endangered by the
29 U.S. Fish and Wildlife Service pursuant to the Endangered
30 Species Act (35 U.S.C. 1531-1544).

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

34 "Wetlands" means those areas that are inundated or

1 saturated by surface or ground water at a frequency or
2 duration sufficient to support, and that under normal
3 circumstances do support, a prevalence of vegetation
4 typically adapted for life in saturated soil conditions.

5 Section 15. Exemptions.

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

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

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

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

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

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

1 will be otherwise minimized.

2 (6) Unless they are to be conducted in Class IA or
3 Class IB wetlands, activities for the placement of
4 pilings for linear projects, such as bridges, elevated
5 walkways, and power line structures.

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

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

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

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

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

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

1 or selected wildlife food plants.

2 (b) Any exemption authorized by and pertaining to
3 wetlands that are subject to regulation under the federal
4 Clean Water Act (33 U.S.C. 1251-1387) or rules adopted
5 thereunder shall also be an exemption for the purpose of this
6 Act.

7 (c) The following are not wetlands for purposes of this
8 Act:

9 (1) Waste treatment systems, including treatment
10 ponds or lagoons, designed to comply with water quality
11 standards of the State or to remediate a site in
12 accordance with an approved Agency program, and former
13 waste treatment systems that have ceased operations less
14 than 33 years before the date the permit application is
15 received by the Agency or that are undergoing remediation
16 in accordance with an approved Agency program.

17 (2) A drainage or irrigation ditch.

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

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

25 (5) Except for wetlands created pursuant to mining
26 activities described in item (7), an incidentally created
27 water-filled depression, unless (i) ownership of the
28 property containing the depression has been transferred
29 away from the party who incidentally created the
30 water-filled depression, (ii) the ownership transfer
31 occurred more than 12 months prior to the commencement of
32 an otherwise regulated activity, (iii) the use of the
33 property has changed from the use that existed when the
34 property was transferred from the party who incidentally

1 created the water-filled depression, (iv) the resulting
2 body of water meets the definition in this Act of a
3 wetland, (v) the ownership of the property has not
4 transferred from the party who created the incidentally
5 created water-filled depression, and (vi) the depression
6 was not created more than 33 years before the date the
7 permit application is received by the Agency.

8 (6) Stormwater or spill management systems,
9 including retention and detention basins, ditches and
10 channels, and former stormwater or spill management
11 systems that have ceased operations less than 33 years
12 before the date the permit application is received by the
13 Agency or that are undergoing remediation in accordance
14 with an approved Agency program.

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

24 (8) Prior converted cropland.

25 Section 20. Applicability. The requirements of this Act
26 shall apply to all isolated wetlands as that term is defined
27 in this Act. In the event that an isolated wetland ceases to
28 meet that definition because it becomes subject to regulation
29 under the federal Clean Water Act, the wetland shall no
30 longer be subject to the provisions of this Act.

31 On and after July 1, 2007, the requirements of this Act
32 shall apply to wetlands, if and only if by that date the COE
33 has entered into a delegation agreement with the Agency;

1 provided, however, that the provisions of this Act shall
2 continue in full force and effect as applied to isolated
3 wetlands. The delegation agreement shall provide, at a
4 minimum, that all delineation, classification, notification,
5 and permitting requirements shall be at least as stringent as
6 those contained in this Act.

7 Section 25. Wetland delineation; classification;
8 notification; permits.

9 (a) The requirements of this Section apply beginning on
10 the effective date of the rules required under Section 40 or
11 18 months from the effective date of this Act, whichever
12 occurs earlier. The procedures and regulatory criteria for
13 the delineation, classification, notification, and permitting
14 for wetlands shall be conducted in accordance with the
15 provisions of this Section.

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

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

33 The Agency shall provide notice to the applicant as to

1 whether a submitted application is complete. Unless the
2 Agency notifies the applicant that the application is
3 incomplete within 15 days of receipt of the application, the
4 application shall be deemed complete. The Agency may request
5 additional information as needed to make the completeness
6 determination. The Agency shall, within 30 days after receipt
7 of a complete determination request, provide the person with
8 a determination as to the existence, location, and surface
9 area of wetlands located on or contiguous to the affected
10 property.

11 If the Agency determines that there are no wetlands on
12 the affected property, any otherwise regulated activity
13 conducted on the property shall not be subject to the
14 provisions of this Act.

15 If the Agency determines that there is one or more
16 wetlands on or contiguous to the affected property, the
17 person may apply to the Agency for classification of such
18 wetlands.

19 Any determination of a wetland by the Agency is a final
20 decision for purposes of appeal to the Board.

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

29 The person seeking a classification shall provide the
30 Agency with sufficient information to render such a
31 classification. The information shall include a wetland
32 delineation made in accordance with the COE Wetlands
33 Delineation Manual, Technical Report Y-87-1.

34 Unless the Agency notifies the applicant that the request

1 for classification is incomplete within 15 days after receipt
2 of the request, the application shall be deemed complete.

3 The Agency may request additional information as needed
4 to make the completeness determination. The Agency shall,
5 within 30 days after receipt of classification request,
6 provide the person with a classification of wetlands located
7 on or contiguous to the affected property. If the Agency
8 fails to provide the person with a classification within 30
9 days, the classification requested by the person shall be
10 deemed granted.

11 The Agency shall classify a wetland as:

12 (1) A Class IA wetland if and only if (A) the
13 wetland is or encompasses a bog; (B) the wetland is or
14 encompasses a fen; (C) the wetland is or encompasses a
15 panne; (D) the wetland is or encompasses a cypress swamp;
16 or (E) a threatened or endangered species has been
17 identified in the wetland, provided that a wetland will
18 not be classified as Class IA based solely on the
19 presence of an endangered plant and the owner of the
20 wetland authorizes the taking of that plant pursuant to
21 the Illinois Endangered Species Protection Act.

22 (2) A Class IB wetland if and only if the wetland
23 (A) is or encompasses an ADID site; or (B) has a
24 Floristic Quality Index (FQI) that is equal to or greater
25 than 20 or a mean coefficient of conservatism (Mean C)
26 equal to or greater than 3.5, determined in accordance
27 with rules adopted by the Agency.

28 (3) A Class II wetland if and only if the wetland
29 is not a Class IA, Class IB, or Class III wetland.

30 (4) A Class III wetland if and only if (A) the
31 wetland is not a Class IA or Class IB wetland, and (B)
32 the total size of the wetland, including contiguous
33 areas, is (i) less than one-quarter acre or (ii) less
34 than one-half acre if the wetland is in a county that

1 does not have authority to establish stormwater
2 management programs under Section 5-1062 or Section
3 5-1062.1 of the Counties Code.

4 Any classification of a wetland by the Agency is a final
5 decision for purposes of appeal to the Board.

6 (d) Subject to the provisions of Section 35 regarding
7 general permits, no person may conduct or cause to be
8 conducted a regulated activity within or affecting a wetland
9 in such a manner that the biologic or hydrologic integrity of
10 the wetland is impaired within the scope of this Act, except
11 in accordance with the terms of an individual permit issued
12 by the Agency or authorization to proceed as applicable under
13 this Section.

14 (1) Class IA.

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

23 (B) No permit under this item (1) may be
24 issued by the Agency without a public notice and
25 opportunity for public hearing being afforded. In
26 the event that an affected party requests a public
27 hearing, a public hearing shall be held.

28 (C) Wetland losses under this item (1) shall
29 be mitigated at a ratio of no greater than 3.5:1 and
30 shall be mitigated in kind and within the same
31 watershed as the impacted area restoring, to the
32 maximum degree practicable as determined by the
33 Agency, both the type and functions of the wetland
34 that will be affected by the regulatory activity.

1 When the type and functions of the wetland that will
2 be affected by the activity cannot be adequately
3 restored to the maximum degree practicable by the
4 ratio allowed in this paragraph, the Agency may, on
5 a case-by-case basis, increase this ratio based on
6 site-specific criteria to be developed by rule. The
7 mitigation shall be consistent with rules adopted by
8 the Board and may consist of actual replacement or
9 participation in a mitigation banking program or
10 other compensation program approved by the Agency.

11 (2) Class IB.

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

17 (B) No permit under this item (2) may be
18 issued by the Agency without a public notice and
19 opportunity for public hearing being afforded. In
20 the event that an affected party requests a public
21 hearing, a public hearing shall be held.

22 (C) Wetland losses under this item (2) shall
23 be mitigated at a ratio of no greater than 3:1 and
24 shall be mitigated in kind and within the same
25 watershed as the impacted area restoring, to the
26 maximum degree practicable as determined by the
27 Agency, both the type and functions of the wetland
28 that will be affected by the regulatory activity.
29 When the type and functions of the wetland that will
30 be affected by the activity cannot be adequately
31 restored to the maximum degree practicable by the
32 ratio allowed in this paragraph, the Agency may, on
33 a case-by-case basis, increase this ratio based on
34 site-specific criteria to be developed by rule. The

1 mitigation shall be consistent with rules adopted by
2 the Board and may consist of actual replacement or
3 participation in a mitigation banking program or
4 other compensation program approved by the Agency.

5 (3) Class II.

6 (A) A permit to conduct a regulated activity
7 affecting a Class II wetland within the scope of
8 this Act shall be granted if documentation is
9 submitted demonstrating that a minimization plan to
10 minimize or alleviate the impact on the wetland has
11 been developed and applied as reasonably
12 appropriate.

13 (B) No permit under this item (3) may be
14 issued by the Agency without a public notice and
15 opportunity for public hearing being afforded. In
16 the event that an affected party requests a public
17 hearing, the Agency may at its discretion hold a
18 public hearing on the proposed regulated activity.

19 (C) Wetland losses under this item (3) shall
20 be mitigated at a ratio of no greater than 1.5:1,
21 and shall be mitigated in kind and within the same
22 watershed as the impacted area restoring, to the
23 maximum degree practicable as determined by the
24 Agency, both the type and functions of the wetland
25 that will be affected by the regulatory activity.
26 When the type and functions of the wetland that will
27 be affected by the activity cannot be adequately
28 restored to the maximum degree practicable by the
29 ratio allowed in this paragraph, the Agency may, on
30 a case-by-case basis, increase this ratio based on
31 site-specific criteria to be developed by rule. The
32 mitigation shall be consistent with rules adopted by
33 the Board and may consist of actual replacement,
34 participation in a mitigation banking program or

1 other compensation programs approved by the Agency,
2 education or research programs, or other appropriate
3 programs.

4 (4) Class III.

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

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

19 (C) Upon receipt of a notification of intent,
20 the Agency shall verify that the regulated activity
21 will affect a wetland that it previously classified
22 as Class III. If the Agency so verifies, the Agency
23 shall send the person, within 30 days of the receipt
24 of the notification, a response stating that the
25 regulated activity may proceed. If the Agency
26 cannot so verify, the Agency shall send the person,
27 within 30 days of the receipt of the notification, a
28 response stating that no classification has been
29 made by the Agency or that a classification of IA,
30 IB, or II was made and that the regulated activity
31 may not proceed until either a classification is
32 made pursuant to this Section, or a permit is
33 obtained, as applicable. Failure of the Agency to
34 respond to a notification shall be deemed as an

1 authorization to proceed.

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

6 (e) Within 15 days of the receipt of a permit
7 application, the Agency shall determine if an application is
8 complete. To be deemed complete, an application must provide
9 all information, as requested in Agency application forms,
10 sufficient to evaluate the application. The information shall
11 include, at a minimum, the following:

12 (1) A sketch that reasonably depicts the area that
13 will be affected by the regulated activity, including
14 wetland and water boundaries for the areas affected and
15 the existing land uses and structures.

16 (2) A description of the proposed activity,
17 including its purpose.

18 (3) A description of any public benefit to be
19 derived from the proposed project.

20 (4) The names and addresses of adjacent landowners
21 as determined by the current tax assessment roles.

22 (5) A wetland delineation made in accordance with
23 the COE Wetlands Delineation Manual, Technical Report
24 Y-87-1.

25 The Agency application forms shall be finalized and made
26 available prior to the date on which any application is
27 required. The Agency shall provide notice to the applicant as
28 to whether a submitted application is complete. Unless the
29 Agency notifies the applicant that the application is
30 incomplete within 20 days of receipt of the application, the
31 application shall be deemed complete. The Agency may request
32 additional information as needed to make the completeness
33 determination. The Agency may, to the extent practicable,
34 provide the applicant with a reasonable opportunity to

1 correct deficiencies prior to a final determination of
2 completeness. Within 90 days after the receipt of a complete
3 application for permit, the Agency shall issue, deny, or
4 issue with conditions a permit. If a public hearing is held
5 on the application, however, this period shall be extended by
6 45 days.

7 (f) The Agency shall not issue any permit pursuant to
8 this Section unless the Agency has certified that the
9 proposed activity will not cause or contribute to a violation
10 of any State water quality standard. The Agency will be
11 deemed to have certified that the proposed activity will not
12 cause or contribute to a violation of any State water quality
13 standard if it has not declined in writing to so certify
14 within 80 days of the filing of the application, unless the
15 Agency has requested that the applicant supply more
16 information relevant to assessing the water quality impacts
17 of the proposed activity.

18 (g) Any person may submit concurrent requests for
19 determination and delineation, classification, and a permit
20 application or provision of notification. The Agency shall
21 act on such combined requests concurrently in accordance with
22 expedited permitting procedures proposed by the Agency and
23 adopted by the Board.

24 (h) Any person may submit an application for an
25 after-the-fact permit to be issued under this Act, and the
26 Agency is authorized to issue such an after-the-fact permit
27 if it determines that the activities covered by the
28 after-the-fact permit application were undertaken and
29 conducted in response to emergency circumstances where there
30 may be an imminent threat to persons, public infrastructure,
31 personal property, or uninterrupted utility service that made
32 it impracticable for the applicant to obtain prior
33 authorization under this Act to undertake and conduct such
34 activities. The applicant shall be required to demonstrate

1 that it provided notice to the Agency of the emergency
2 circumstances as soon as reasonably possible following the
3 discovery of such circumstances.

4 (i) The Board shall adopt rules to carry out the
5 provisions of this Section in accordance with Section 40 of
6 this Act.

7 Section 35. General permits.

8 (a) Notwithstanding Section 25, any person who intends
9 to conduct a regulated activity within the State may do so in
10 accordance with a general permit issued by the Agency under
11 this Section.

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

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

1 (1) the construction or maintenance of access roads
2 for utility lines, substations, or related equipment or
3 facilities; and

4 (2) activities for the purpose of preserving and
5 enhancing aviation safety or preventing an airport
6 hazard.

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

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

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

31 Section 40. Illinois Wetlands Advisory Committee;
32 duties; rules.

33 (a) There is hereby established the Illinois Wetlands

1 Advisory Committee consisting of 13 members appointed by the
2 Governor. The Committee shall include 5 members selected from
3 among the following organizations:

4 (1) The Illinois State Chamber of Commerce.

5 (2) The Illinois Association of Realtors.

6 (3) The Consulting Engineers Council of Illinois.

7 (4) The Illinois Association of Aggregate
8 Producers.

9 (5) The Illinois Association of Home Builders.

10 (6) The National Solid Waste Management
11 Association.

12 (7) The Illinois Farm Bureau.

13 The Committee shall include 3 members selected from the
14 membership of environmental and conservation groups in the
15 State.

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

20 The Committee shall include 3 other members as determined
21 by the Governor.

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

24 (b) The Committee shall review, evaluate, and make
25 recommendations (i) regarding State laws, rules, and
26 procedures that relate to this Act and (ii) relating to the
27 State's efforts to implement this Act.

28 (c) Within 6 months after the effective date of this
29 Act, the Agency, after consideration of the recommendations
30 of the Committee, shall propose to the Board any rules
31 required by this Act prescribing procedures and standards for
32 its administration. Within 6 months of the proposal of such
33 rules to the Board, the Board shall adopt, pursuant to
34 Sections 27 and 28 of the Environmental Protection Act and

1 any rules adopted thereunder, rules that are consistent with
2 this Act. Nothing in this Act shall preclude, at any time,
3 the recommendation, proposal, or adoption of any other rules
4 deemed necessary for the orderly implementation of this Act.

5 (d) The Committee shall develop a plan for Statewide
6 wetlands protection and shall submit the plan to the State.
7 The State shall seek to obtain a delegation of COE authority
8 under Section 404 of the federal Clean Water Act for all
9 wetlands in Illinois on or before July 1, 2007, in accordance
10 with Section 20 of this Act.

11 Section 45. Appeal of final agency decision; judicial
12 review.

13 (a) If the Agency rejects a proposed determination and
14 delineation, refuses to approve a classification, or approves
15 a classification other than that supplied by the applicant,
16 or refuses to grant or grants with conditions a permit under
17 Sections 25 or 35 of this Act, the applicant may, within 35
18 days after receipt of the decision, petition for a hearing
19 before the Board to contest the decision of the Agency.
20 However, the 35-day period for petitioning for a hearing may
21 be extended by the applicant for a period of time not to
22 exceed 90 days by written notice provided to the Board from
23 the applicant and the Agency within the initial period. The
24 applicant and the Agency must jointly file a request for
25 extension within 35 days after the date of service of the
26 Agency's final decision. The joint request may seek an appeal
27 period not exceeding 125 days from the date of service of the
28 Agency's final decision to file a petition for review under
29 this Section. The Board shall publish notice in a newspaper
30 of general circulation in that county where the regulated
31 activity at issue is located for a period of 21 days. The
32 Agency shall appear as respondent in the hearing. At the
33 hearing the rules prescribed in Section 32 and subsection (a)

1 of Section 33 of the Environmental Protection Act shall apply
2 and the burden of proof shall be on the petitioner.

3 (b) The applicant or the Agency, when adversely affected
4 by a final order or determination of the Board, may obtain
5 judicial review by filing a petition for review within 35
6 days from the date that a copy of the order or other final
7 action sought to be reviewed was served upon the party
8 affected by the order or other final Board action complained
9 of, under the provisions of the Administrative Review Law and
10 the rules adopted pursuant thereto, except that review shall
11 be afforded directly in the appellate court for the district
12 in which the cause of action arose and not in the circuit
13 court.

14 Section 50. Investigation; enforcement.

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

21 (b) The Agency shall conduct investigations and pursue
22 enforcement of alleged violations of this Act, any rule
23 adopted pursuant to this Act, a permit granted by the Agency,
24 or a term or condition of a permit as prescribed in Section
25 30 and subsections (a), (b), and (c) of Section 31 of the
26 Environmental Protection Act and any rules adopted pursuant
27 to this Act.

28 (c) The Agency shall have the duty to administer the
29 permit and certification systems as may be established by
30 this Act or by rules adopted pursuant to this Act.

31 (d) In hearings before the Board to enforce provisions
32 of this Act, the burden shall be on the Agency to show either
33 that the respondent has violated or threatens to violate any

1 provision of this Act or any rule adopted pursuant to this
2 Act or a permit or term or condition of a permit. If such
3 proof has been made, the burden shall be on the respondent to
4 show that compliance with the Board's rules would impose an
5 arbitrary or unreasonable hardship.

6 (e) Hearings in enforcement proceedings shall be held in
7 accordance with Section 32 of the Environmental Protection
8 Act and any rules adopted thereunder.

9 (f) Board determinations and orders shall be made in
10 accordance with Section 33 of the Environmental Protection
11 Act and any rules adopted thereunder.

12 (g) The civil penalties provided for in this Section may
13 be recovered in a civil action, which may be instituted in a
14 court of competent jurisdiction or by determination or order
15 of the Board. The State's Attorney of the county in which the
16 alleged violation occurred, or the Attorney General, may, at
17 the request of the Agency or on his or her own motion,
18 institute a civil action in a court of competent jurisdiction
19 to recover civil penalties and an injunction to restrain
20 violations of the Act.

21 (h) Any person who violates any provision of this Act or
22 any rule adopted pursuant to this Act, or any permit or term
23 or condition thereof, or that violates any determination or
24 order of the Board pursuant to this Act, shall be liable for
25 a civil penalty of not to exceed \$10,000 per day of
26 violation; such penalties may, upon order of the Board or a
27 court of competent jurisdiction, be made payable to the
28 Environmental Protection Trust Fund, to be used in accordance
29 with the provisions of the Environmental Protection Trust
30 Fund Act.

31 (i) In determining the appropriate civil penalty to be
32 imposed under this Section, the Board is authorized to
33 consider any matters of record in mitigation or aggravation
34 of penalty, including but not limited to the following

1 factors:

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

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

7 (3) Any economic benefits accrued by the person
8 because of delay in compliance with requirements.

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

14 (5) The number, proximity in time, and gravity of
15 previously adjudicated violations of this Act by the
16 person.

17 (j) A violation of any provision of this Act or any rule
18 adopted pursuant to this Act, or any permit or term or
19 condition thereof, or any violation of any determination or
20 order of the Board pursuant to this Act, shall not be deemed
21 a criminal offense.

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

31 Section 55. Fees.

32 (a) Any person seeking a permit, coverage under a
33 general permit, or filing a notification of activities to be

1 conducted on a Class III wetland from the Agency shall pay a
2 fee to the Agency at the time of filing an application or
3 notification. The following fee amounts shall apply:

4 (1) The fee for a Class IA or Class IB wetland is
5 \$400 if the site is less than 1 acre; \$500 if the site is
6 equal to or greater than 1 acre but less than 10 acres;
7 \$750 if the site is equal to or greater than 10 acres but
8 less than 50 acres; and \$1,000 if the site is equal to or
9 greater than 50 acres. In the event that the Agency is
10 required to review a mitigation plan for any such site,
11 an additional fee will be required at the time the
12 applicant is notified that such a review is required. The
13 additional mitigation review fee shall be: \$750 if the
14 affected wetland is less than 0.5 acres; \$1000 if the
15 affected wetland is equal to or greater than 0.5 acres
16 but less than 2 acres; \$1250 if the site is equal to or
17 greater than 2 acres but less than 5 acres; and \$1,500 if
18 the site is equal to or greater than 5 acres.

19 (2) The fee for a Class II wetland shall be
20 calculated at 50% of the fee charged to a Class IA or
21 Class IB wetland.

22 (3) The fee for filing a notice of intent to be
23 covered under a general permit shall be \$200.

24 (4) The fee for filing a notification of activities
25 to be conducted on a Class III wetland shall be \$150.

26 (b) The Agency shall establish procedures for the
27 collection of fees required under this Act.

28 (c) There is hereby created in the State Treasury a
29 special fund to be known as the Wetlands Management Fund.
30 There shall be deposited into the Fund all monies received
31 from the fees collected under subsection (a) of this Section.
32 Pursuant to appropriation, monies from the Fund shall be
33 allocated in amounts deemed necessary to implement this Act
34 and, if sufficient funds are available, for the

1 administration of other permit programs administered by the
2 Agency.

3 (d) For the purposes of this Section, "site" means the
4 area of land that will be disturbed or altered as a result of
5 the project or development that may affect a wetland.

6 Section 60. Home rule; delegation of authority.

7 (a) A home rule unit may not regulate wetlands except as
8 provided in subsection (b) and (c) of this Section. This
9 Section is a limitation under subsection (i) of Section 6 of
10 Article VII of the Illinois Constitution on the concurrent
11 exercise by home rule units of powers in functions exercised
12 by the State.

13 (b) In cases where a county government has implemented a
14 wetlands regulation program prior to March 1, 2003, that
15 county will be permitted to regulate wetlands until July 1,
16 2007. Beginning on July 1, 2007, the limitation in subsection
17 (a) of this Section shall take effect.

18 (c) The provisions of any ordinance or resolution
19 adopted before, on, or after the effective date of this Act
20 of the 93d General Assembly by any unit of local government
21 that impose restrictions or limitations on the
22 identification, classification, notification, permitting, or
23 regulatory criteria for wetlands are invalid, except as
24 authorized by subsection (d) of this Section, and all those
25 existing ordinances and resolutions are declared null and
26 void. This subsection shall not be deemed to be a limitation
27 on any legitimate statutory authority of any unit of local
28 government to regulate flood control or stormwater
29 management, so long as those rules are not more stringent
30 than the rules adopted under Section 40 of this Act.

31 (d) The Agency may enter into written delegation
32 agreements with any county government under which it may
33 delegate all or portions of its inspecting, investigating,

1 and enforcement functions under this Act. In cases where a
2 county government has implemented a wetlands regulation
3 program prior to March 1, 2003, the Agency shall, upon the
4 receipt of a request for delegation by such county
5 government, delegate all or portions of its functions under
6 this Act, as requested. Such delegation agreements shall, at
7 a minimum, require that:

8 (1) All of the administrative procedures and
9 operations performed by the delegated county government
10 shall be performed in accordance with the provisions of
11 this Act and with rules adopted pursuant to Section 40 of
12 this Act.

13 (2) The general permits issued under Section 35 of
14 this Act shall be administered by the delegated county
15 government for those activities covered under the general
16 permits.

17 (3) At the time of filing a permit application or
18 notification with a delegated county government, the
19 person shall file a certification with the Agency
20 attesting to such filing.

21 (4) Within 30 days after the delegated county
22 government takes final action on a permit or
23 notification, a copy of the permit or notice action shall
24 be filed with the Agency.

25 (5) Any final action taken by a delegated county
26 government may be appealed in accordance with the
27 provisions of Section 45 of this Act.

28 (e) Notwithstanding any other provision of law to the
29 contrary, no unit of local government shall be liable for any
30 injury resulting from the exercise of its authority pursuant
31 to such a delegation agreement, unless the injury is
32 proximately caused by the willful and wanton negligence of an
33 agent or employee of the unit of local government, and any
34 policy of insurance coverage issued to a unit of local

1 government may provide for the denial of liability and the
2 nonpayment of claims based upon injuries for which the unit
3 of local government is not liable pursuant to this
4 subsection.

5 Section 90. The State Finance Act is amended by adding
6 Section 5.620 as follows:

7 (30 ILCS 105/5.620 new)

8 Sec. 5.620. The Wetlands Management Fund.

9 Section 97. Severability. The provisions of this Act are
10 severable under Section 1.31 of the Statute on Statutes."