



Sen. Terry Link

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1 AMENDMENT TO HOUSE BILL 913

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 913 on page 1, line  
3 5, by deleting "Illinois"; and

4 on page 1, immediately below line 5, by inserting the  
5 following:

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

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

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

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

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

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

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

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

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

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

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

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

24 (k) "Corps of Engineers" or "COE" means the United States  
25 Army Corps of Engineers.

26 (l) "Cypress swamp" means forested, permanent or  
27 semi-permanent bodies of water, with species assemblages  
28 characteristic of the Gulf and Southeastern Coastal Plains,  
29 including bald cypress, which are restricted to extreme  
30 southern Illinois.

31 (m) "Department" means the Illinois Department of Natural  
32 Resources.

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

34 (o) "Fen" means a wetland fed by an alkaline water source

1 such as a calcareous spring or seep.

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

12 (q) "Incidentally created" means created as a result of any  
13 normal or routine activity coincidental with the conduct of  
14 legitimate business enterprises, except that a wetland or  
15 depression created as mitigation for any activity affecting  
16 wetlands is not "incidentally created."

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

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

27 (t) "Panne" means wet interdunal flats located near Lake  
28 Michigan.

29 (u) "Person" means an individual, partnership,  
30 co-partnership, firm, company, limited liability company,  
31 corporation, association, joint stock company, trust, estate,  
32 political subdivision, State agency, or other legal entity, or  
33 its legal representative, agent, or assigns.

34 (v) "Prior converted cropland" means a converted wetland

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

12 (w) "Regulated activity" means the discharge of dredged or  
13 fill material into a wetland, the drainage of a wetland, or  
14 excavation of a wetland that results in more than incidental  
15 fallback.

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

23 (y) "Upland" means non-wetland, when used to describe a  
24 particular land use, or non-hydric, when used to describe a  
25 soil type.

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

31 Section 20. Exemptions.

32 (a) As long as they do not have as their purpose bringing a  
33 wetland into a use to which it was not previously subject, the

1 following are not prohibited by or otherwise subject to  
2 regulation under this Act:

3 (1) Normal farming, silviculture, and ranching  
4 activities such as plowing, seeding, cultivating, minor  
5 drainage, harvesting for the production of food, fiber, and  
6 forest products, or upland soil and water conservation  
7 practices.

8 (2) Maintenance, including emergency reconstruction of  
9 recently damaged parts, of currently serviceable  
10 structures such as dikes, dams, levees, groins, riprap,  
11 breakwaters, causeways, and bridge abutments or  
12 approaches, and transportation structures.

13 (3) Construction or maintenance of farm or stock ponds  
14 or irrigation canals or ditches, or the maintenance of  
15 drainage ditches.

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

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

28 (6) Except for Class IA and Class IB wetlands,  
29 activities for the placement of pilings for linear  
30 projects, such as bridges, elevated walkways, and power  
31 line structures in accordance with best management  
32 practices, to assure that the flow and circulation patterns  
33 and chemical and biological characteristics of the wetland  
34 are not impaired, that the reach of the wetland is not

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

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

6 (8) Repair and maintenance of existing buildings,  
7 facilities, lawns, and ornamental plantings.

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

11 (10) Application of media, including deicing media, on  
12 the surface of existing roads for purposes of public  
13 safety.

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

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

33 (b) Any exemption authorized by and pertaining to wetlands  
34 that are subject to regulation under the federal Clean Water

1 Act, or regulations promulgated thereunder, shall also be an  
2 exemption for the purpose of this Act.

3 (c) The following are not isolated wetlands for purposes of  
4 this Act:

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

13 (2) A drainage or irrigation ditch.

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

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

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

1 created the incidentally created water-filled depression,  
2 the depression was not created more than 33 years before  
3 the date the application is received by the Department.

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

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

19 (8) Prior converted cropland.

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

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

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



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

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

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

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

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

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

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

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

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

20           Any determination of a wetland by the Department is a final  
21 decision for purposes of appeal.

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

29           The person seeking a classification shall provide the  
30 Department with sufficient information to render such a  
31 classification. Such 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 Department notifies the applicant that the

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

11 Wetlands shall be classified as follows:

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

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

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

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

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

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

26 (F) a threatened or endangered species has been  
27 identified in the wetland.

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

30 (A) is or encompasses an ADID site;

31 (B) is or encompasses a Category VI Illinois  
32 Natural Area Inventory Site or regional equivalent;  
33 provided that the Department shall disclose within 5  
34 working days of a request from an applicant, a

1 prospective applicant, or a qualified professional on  
2 behalf of an applicant or a prospective applicant  
3 whether a site identified by latitude and longitude  
4 includes a Category VI Illinois Natural Areas  
5 Inventory Site; or

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

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

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

16 (A) the wetland is not a Class IA or Class IB  
17 wetland; and

18 (B) the total size of the wetland, including  
19 contiguous areas, is

20 (i) less than 0.25 acre, or

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

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

34 (1) Class IA Wetlands:

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

8 Based upon a review of the submitted documentation  
9 and any other available resources, the Department  
10 shall make a determination as to whether the proposed  
11 modification represents the least amount of wetland  
12 impact required to restore an economic use to the  
13 upland portion of the parcel.

14 Wetland losses shall be mitigated at a ratio of  
15 4.5:1 and shall be mitigated in kind and within the  
16 same watershed as the impacted area restoring, to the  
17 maximum degree practicable as determined by the  
18 Department, both the type and functions of the wetland  
19 that will be affected by the regulatory activity.

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

27 (B) No permit under this subdivision (d)(1) may be  
28 issued by the Department without a public notice and a  
29 public hearing.

30 (2) Class IB Wetlands:

31 (A) A permit to conduct a regulated activity  
32 affecting a Class IB wetland within the scope of this  
33 Act shall be granted if documentation is submitted that  
34 demonstrates that no practicable alternative to

1 wetland modification exists.

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

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

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

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

28 (3) Class II Wetlands:

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

34 Based upon a review of the submitted documentation

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

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

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

19 (4) Class III Wetlands:

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

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

34 (C) Upon receipt of a notification of intent, the

1 Department shall verify that the regulated activity  
2 will affect a wetland that it previously classified as  
3 Class III.

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

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

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

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

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



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

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

34 (g) A person may submit concurrent requests for (i)

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

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

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

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

26 Section 40. General permits.

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

31 (b) Permits for all categories of activities, subject to  
32 the same permit limitations and conditions, that are the

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

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

19 Specifically, the Department must adopt general permits  
20 for each of the following:

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

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

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

34 (e) Compliance with the terms of a general permit shall be

1 deemed compliance with the provisions of this Act if the  
2 applicant (i) files a notice of intent to be covered under the  
3 provisions of the general permit in accordance with regulations  
4 adopted pursuant to this Act and (ii) files any reports  
5 required by the general permit.

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

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

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

18 The Committee shall include 5 members representing the  
19 interests of business, industry, real estate, and agriculture.

20 The Committee shall include 5 members selected from the  
21 membership of environmental and conservation groups in the  
22 State.

23 The Committee shall include 2 members representing  
24 counties exercising authority under Section 5-1062 or 5-1062.1  
25 of the Counties Code to establish stormwater management  
26 programs.

27 The Committee shall include one member representing  
28 municipalities.

29 The Committee shall include one member representing  
30 building trades unions.

31 The Committee shall include 3 other members as determined  
32 by the Governor.

33 The Director of Natural Resources, or his or her designee,

1 and the Director of the Illinois Environmental Protection  
2 Agency, or his or her designee, shall be non-voting members of  
3 the Committee.

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

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

10 The Department shall provide reasonable and necessary  
11 staff support to the Committee.

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

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

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

33 (e) The Committee shall assist counties having stormwater  
34 management authority under Section 5-1062 or 5-1062.1 of the

1 Counties Code in coordinating and unifying stormwater  
2 management regulations adopted thereto, as required in Section  
3 60(f) of this Act.

4 Section 50. Appeal of final Department decision; judicial  
5 review.

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

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

19 Section 55. Investigation; enforcement.

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

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

1 injunction to restrain violations of the Act.

2 (c) Any person who violates any provision of this Act or  
3 any rule adopted hereunder, or any permit or term or condition  
4 thereof, shall be liable for a civil penalty of not to exceed  
5 \$10,000 per day of violation; such penalties may be made  
6 payable to the Wetlands Protection Fund and shall be deposited  
7 into that Fund as provided in subsection (j). In determining  
8 the appropriate civil penalty to be imposed under this Section,  
9 the Court is authorized to consider any matters of record in  
10 mitigation or aggravation of penalty, including but not limited  
11 to the following factors:

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

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

17 (3) Any economic benefits accrued by the violator  
18 through the violation.

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

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

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

29 (e) All final orders imposing civil penalties pursuant to  
30 this Section shall prescribe the time for payment of such  
31 penalties. If any such penalty is not paid within the time  
32 prescribed, interest on such penalty at the rate set forth in  
33 subsection (a) of Section 1003 of the Illinois Income Tax Act  
34 shall be paid for the period from the date payment is due until

1 the date payment is received. However, if the time for payment  
2 is stayed during the pendency of an appeal, interest shall not  
3 accrue during such stay.

4 (f) The Department may terminate a permit if the holder  
5 substantially violates any condition of the permit, obtains a  
6 permit by misrepresentation, or fails to disclose relevant  
7 facts.

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

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

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

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



1           (k) Enforcement actions under this Section may be  
2 concurrent or separate.

3           Section 60. County authority.

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

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

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

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

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

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

1 the period that the Department is considering a county's  
2 request under subsection (b), but the requirements of this Act  
3 do apply until the county has requested recognition under  
4 subsection (b), unless the county has received immediate  
5 recognition under subsection (b-5) of this Section.

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

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

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

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

22 Section 65. Wetlands Protection Fund. All penalties  
23 collected by the Department pursuant to this Act shall be  
24 deposited into the Wetlands Protection Fund, which is hereby  
25 created as a special fund in the State Treasury. In addition to  
26 any moneys that may be appropriated from the General Revenue  
27 Fund, the Illinois General Assembly shall appropriate moneys in  
28 the Wetlands Protection Fund to the Department in amounts  
29 deemed necessary to implement this Act.

30 Section 90. Repeal. This Act is repealed on July 1, 2007.

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

1 Section 5.625 as follows:

2 (30 ILCS 105/5.625 new)

3 Sec. 5.625. The Wetlands Protection Fund.

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

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