



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

Introduced 02/09/04, by Steve Davis

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/5.625 new

Creates the Wetlands Protection Act. Provides that any person who intends to discharge dredged or fill material into a wetland, drain a wetland, or excavate a wetland resulting in more than incidental fallback may request a determination from the Environmental Protection Agency as to the existence, location, and surface area of any wetlands on or contiguous to the affected property. Provides for the classification of wetlands and provides different criteria for obtaining a permit for the regulated activity based on the classification. Creates the Illinois Wetlands Advisory Committee. Preempts home rule. Amends the State Finance Act to create the Wetlands Management Fund.

LRB093 19006 BDD 44741 b

FISCAL NOTE ACT
MAY APPLY

HOME RULE NOTE
ACT MAY APPLY

1 AN ACT concerning wetlands.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as
5 theWetlands Protection Act.

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

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

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

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

18 "Agency" means the Illinois Environmental Protection
19 Agency.

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

22 "Board" means the Illinois Pollution Control Board.

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

27 "Commencing such a regulated activity" means any steps
28 taken in preparation of conducting a regulated activity that
29 may impact the affected property, such as cutting, filling,
30 pumping of water, and earth movement.

31 "Committee" means the Illinois Wetlands Advisory

1 Committee.

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

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

16 "Corps of Engineers" or "COE" means the United States Army
17 Corps of Engineers.

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

23 "Delegation agreement" means a written document executed
24 between the COE and the Agency that authorizes the Agency to
25 assume all of the COE's authority under the federal Clean Water
26 Act regarding activities in wetlands. Such delegation
27 agreement shall include federal funding sufficient to allow the
28 Agency to carry out its responsibilities under such agreement.

29 "Director" means the Director of the Illinois
30 Environmental Protection Agency.

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

33 "Floristic quality index" means an index calculated using
34 the Floristic Quality Assessment Method of assessing floristic
35 integrity or quality.

36 "Incidental fallback" means the redeposit of small volumes

1 of dredged material that is incidental to excavation activity
2 in waters of the State when such material falls back to
3 substantially the same place as the initial removal.

4 "Incidentally created" means created as a result of any
5 normal or routine activity coincidental with the conduct of
6 legitimate business enterprises, except that a wetland or
7 depression created as mitigation for any activity affecting
8 wetlands is not "incidentally created".

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

15 "Panne" means wet interdunal flats located near Lake
16 Michigan.

17 "Person" means an individual, partnership, co-partnership,
18 firm, company, limited liability company, corporation,
19 association, joint stock company, trust, estate, political
20 subdivision, state agency, or other legal entity, or their
21 legal representative, agent, or assign.

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

35 "Regulated activity" means the discharge of dredged or fill
36 material into a wetland, the drainage of a wetland, or

1 excavation of a wetland that results in more than incidental
2 fallback.

3 "Threatened or endangered species" means those species
4 that have been designated as threatened or endangered by the
5 Illinois Endangered Species Protection Board pursuant to the
6 Illinois Endangered Species Protection Act and those species
7 that have been designated as threatened or endangered by the
8 U.S. Fish and Wildlife Service pursuant to the Endangered
9 Species Act (35 U.S.C. 1531-1544).

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

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

18 Section 15. Exemptions.

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

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

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

33 (3) Construction or maintenance of farm or stock ponds
34 or irrigation ditches or the maintenance of drainage
35 ditches.

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

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

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

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

20 (8) Repair and maintenance of existing buildings,
21 facilities, lawns, and ornamental plantings.

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

25 (10) Application of media, including deicing media, on
26 the surface of existing roads for purposes of public
27 safety.

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

31 (12) Wetland management practices on lands that are
32 used primarily for the management of waterfowl or other
33 migratory water birds or furbearers if such practices took
34 place on these lands prior to the effective date of this
35 Act. This includes vegetation management that may include
36 the use of fire, chemical, or mechanical (hydro-axe,

1 bulldozer, rome disk, or similar equipment) removal of
2 invading woody or herbaceous vegetation to maintain a
3 preferred successional stage. Use of chemicals must be by a
4 certified applicator and chemicals must be registered for
5 appropriate use. Clearing or removal of woody vegetation
6 shall be limited to 4-inch dbh or smaller material for the
7 purpose of establishing or maintaining the successional
8 stage of a wetland as a herbaceous wetland vegetated by
9 native moist soil plants or selected wildlife food plants.

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

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

16 (1) Waste treatment systems, including treatment ponds
17 or lagoons, designed to comply with water quality standards
18 of the State or to remediate a site in accordance with an
19 approved Agency program, and former waste treatment
20 systems that have ceased operations less than 33 years
21 before the date the permit application is received by the
22 Agency or that are undergoing remediation in accordance
23 with an approved Agency program.

24 (2) A drainage or irrigation ditch.

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

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

32 (5) Except for wetlands created pursuant to mining
33 activities described in item (7), an incidentally created
34 water-filled depression, unless (i) ownership of the
35 property containing the depression has been transferred
36 away from the party who incidentally created the

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

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

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

29 (8) Prior converted cropland.

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

1 On and after July 1, 2007, the requirements of this Act
2 shall apply to wetlands, if and only if by that date the COE
3 has entered into a delegation agreement with the Agency;
4 provided, however, that the provisions of this Act shall
5 continue in full force and effect as applied to isolated
6 wetlands. The delegation agreement shall provide, at a minimum,
7 that all delineation, classification, notification, and
8 permitting requirements shall be at least as stringent as those
9 contained in this Act.

10 Section 25. Wetland delineation; classification;
11 notification; permits.

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

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

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

34 The Agency shall provide notice to the applicant as to
35 whether a submitted application is complete. Unless the Agency

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

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

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

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

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

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

31 Unless the Agency notifies the applicant that the request
32 for classification is incomplete within 15 days after receipt
33 of the request, the application shall be deemed complete.

34 The Agency may request additional information as needed to
35 make the completeness determination. The Agency shall, within
36 30 days after receipt of classification request, provide the

1 person with a classification of wetlands located on or
2 contiguous to the affected property. If the Agency fails to
3 provide the person with a classification within 30 days, the
4 classification requested by the person shall be deemed granted.

5 The Agency shall classify a wetland as:

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

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

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

24 (4) A Class III wetland if and only if (A) the wetland
25 is not a Class IA or Class IB wetland, and (B) the total
26 size of the wetland, including contiguous areas, is (i)
27 less than one-quarter acre or (ii) less than one-half acre
28 if the wetland is in a county that does not have authority
29 to establish stormwater management programs under Section
30 5-1062 or Section 5-1062.1 of the Counties Code.

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

33 (d) Subject to the provisions of Section 35 regarding
34 general permits, no person may conduct or cause to be conducted
35 a regulated activity within or affecting a wetland in such a
36 manner that the biologic or hydrologic integrity of the wetland

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

4 (1) Class IA.

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

12 (B) No permit under this item (1) may be issued by
13 the Agency without a public notice and opportunity for
14 public hearing being afforded. In the event that an
15 affected party requests a public hearing, a public
16 hearing shall be held.

17 (C) Wetland losses under this item (1) shall be
18 mitigated at a ratio of no greater than 3.5:1 and shall
19 be mitigated in kind and within the same watershed as
20 the impacted area restoring, to the maximum degree
21 practicable as determined by the Agency, both the type
22 and functions of the wetland that will be affected by
23 the regulatory activity. When the type and functions of
24 the wetland that will be affected by the activity
25 cannot be adequately restored to the maximum degree
26 practicable by the ratio allowed in this paragraph, the
27 Agency may, on a case-by-case basis, increase this
28 ratio based on site-specific criteria to be developed
29 by rule. The mitigation shall be consistent with rules
30 adopted by the Board and may consist of actual
31 replacement or participation in a mitigation banking
32 program or other compensation program approved by the
33 Agency.

34 (2) Class IB.

35 (A) A permit to conduct a regulated activity
36 affecting a Class IB wetland within the scope of this

1 Act shall be granted if documentation is submitted that
2 demonstrates that no practicable alternative to
3 wetland modification exists.

4 (B) No permit under this item (2) may be issued by
5 the Agency without a public notice and opportunity for
6 public hearing being afforded. In the event that an
7 affected party requests a public hearing, a public
8 hearing shall be held.

9 (C) Wetland losses under this item (2) shall be
10 mitigated at a ratio of no greater than 3:1 and shall
11 be mitigated in kind and within the same watershed as
12 the impacted area restoring, to the maximum degree
13 practicable as determined by the Agency, both the type
14 and functions of the wetland that will be affected by
15 the regulatory activity. When the type and functions of
16 the wetland that will be affected by the activity
17 cannot be adequately restored to the maximum degree
18 practicable by the ratio allowed in this paragraph, the
19 Agency may, on a case-by-case basis, increase this
20 ratio based on site-specific criteria to be developed
21 by rule. The mitigation shall be consistent with rules
22 adopted by the Board and may consist of actual
23 replacement or participation in a mitigation banking
24 program or other compensation program approved by the
25 Agency.

26 (3) Class II.

27 (A) A permit to conduct a regulated activity
28 affecting a Class II wetland within the scope of this
29 Act shall be granted if documentation is submitted
30 demonstrating that a minimization plan to minimize or
31 alleviate the impact on the wetland has been developed
32 and applied as reasonably appropriate.

33 (B) No permit under this item (3) may be issued by
34 the Agency without a public notice and opportunity for
35 public hearing being afforded. In the event that an
36 affected party requests a public hearing, the Agency

1 may at its discretion hold a public hearing on the
2 proposed regulated activity.

3 (C) Wetland losses under this item (3) shall be
4 mitigated at a ratio of no greater than 1.5:1, and
5 shall be mitigated in kind and within the same
6 watershed as the impacted area restoring, to the
7 maximum degree practicable as determined by the
8 Agency, both the type and functions of the wetland that
9 will be affected by the regulatory activity. When the
10 type and functions of the wetland that will be affected
11 by the activity cannot be adequately restored to the
12 maximum degree practicable by the ratio allowed in this
13 paragraph, the Agency may, on a case-by-case basis,
14 increase this ratio based on site-specific criteria to
15 be developed by rule. The mitigation shall be
16 consistent with rules adopted by the Board and may
17 consist of actual replacement, participation in a
18 mitigation banking program or other compensation
19 programs approved by the Agency, education or research
20 programs, or other appropriate programs.

21 (4) Class III.

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

26 (B) The notification shall include (i) a sketch
27 that reasonably depicts the area that will be affected
28 by the regulated activity, including wetland and water
29 boundaries for the areas affected and the existing land
30 uses and structures; (ii) a description of the proposed
31 activity, including its purpose; (iii) a description
32 of any public benefit to be derived from the proposed
33 project; and (iv) the names and addresses of adjacent
34 landowners as determined by the current tax assessment
35 roles.

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

1 Agency shall verify that the regulated activity will
2 affect a wetland that it previously classified as Class
3 III. If the Agency so verifies, the Agency shall send
4 the person, within 30 days of the receipt of the
5 notification, a response stating that the regulated
6 activity may proceed. If the Agency cannot so verify,
7 the Agency shall send the person, within 30 days of the
8 receipt of the notification, a response stating that no
9 classification has been made by the Agency or that a
10 classification of IA, IB, or II was made and that the
11 regulated activity may not proceed until either a
12 classification is made pursuant to this Section, or a
13 permit is obtained, as applicable. Failure of the
14 Agency to respond to a notification shall be deemed as
15 an authorization to proceed.

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

19 (e) Within 15 days of the receipt of a permit application,
20 the Agency shall determine if an application is complete. To be
21 deemed complete, an application must provide all information,
22 as requested in Agency application forms, sufficient to
23 evaluate the application. The information shall include, at a
24 minimum, the following:

25 (1) A sketch that reasonably depicts the area that will
26 be affected by the regulated activity, including wetland
27 and water boundaries for the areas affected and the
28 existing land uses and structures.

29 (2) A description of the proposed activity, including
30 its purpose.

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

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

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

1 The Agency application forms shall be finalized and made
2 available prior to the date on which any application is
3 required. The Agency shall provide notice to the applicant as
4 to whether a submitted application is complete. Unless the
5 Agency notifies the applicant that the application is
6 incomplete within 20 days of receipt of the application, the
7 application shall be deemed complete. The Agency may request
8 additional information as needed to make the completeness
9 determination. The Agency may, to the extent practicable,
10 provide the applicant with a reasonable opportunity to correct
11 deficiencies prior to a final determination of completeness.
12 Within 90 days after the receipt of a complete application for
13 permit, the Agency shall issue, deny, or issue with conditions
14 a permit. If a public hearing is held on the application,
15 however, this period shall be extended by 45 days.

16 (f) The Agency shall not issue any permit pursuant to this
17 Section unless the Agency has certified that the proposed
18 activity will not cause or contribute to a violation of any
19 State water quality standard. The Agency will be deemed to have
20 certified that the proposed activity will not cause or
21 contribute to a violation of any State water quality standard
22 if it has not declined in writing to so certify within 80 days
23 of the filing of the application, unless the Agency has
24 requested that the applicant supply more information relevant
25 to assessing the water quality impacts of the proposed
26 activity.

27 (g) Any person may submit concurrent requests for
28 determination and delineation, classification, and a permit
29 application or provision of notification. The Agency shall act
30 on such combined requests concurrently in accordance with
31 expedited permitting procedures proposed by the Agency and
32 adopted by the Board.

33 (h) Any person may submit an application for an
34 after-the-fact permit to be issued under this Act, and the
35 Agency is authorized to issue such an after-the-fact permit if
36 it determines that the activities covered by the after-the-fact

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

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

12 Section 35. General permits.

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

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

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

1 for:

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

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

7 (d) No general permit adopted under this Section shall be
8 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 Agency
11 determines that the activities authorized by the general permit
12 have an adverse impact on the environment, cause or contribute
13 to a violation of State water quality standards, or are more
14 appropriately authorized by individual permits.

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

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

29 Section 40. Illinois Wetlands Advisory Committee; duties;
30 rules.

31 (a) There is hereby established the Illinois Wetlands
32 Advisory Committee consisting of 13 members appointed by the
33 Governor. The Committee shall include 5 members selected from
34 among the following organizations:

35 (1) The Illinois State Chamber of Commerce.

1 (2) The Illinois Association of Realtors.

2 (3) The Consulting Engineers Council of Illinois.

3 (4) The Illinois Association of Aggregate Producers.

4 (5) The Illinois Association of Home Builders.

5 (6) The National Solid Waste Management Association.

6 (7) The Illinois Farm Bureau.

7 The Committee shall include 3 members selected from the
8 membership of environmental and conservation groups in the
9 State.

10 The Committee shall include 2 persons representing
11 counties exercising authority under Section 5-1062 or Section
12 5-1062.1 of the Counties Code to establish stormwater
13 management programs.

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

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

18 (b) The Committee shall review, evaluate, and make
19 recommendations (i) regarding State laws, rules, and
20 procedures that relate to this Act and (ii) relating to the
21 State's efforts to implement this Act.

22 (c) Within 6 months after the effective date of this Act,
23 the Agency, after consideration of the recommendations of the
24 Committee, shall propose to the Board any rules required by
25 this Act prescribing procedures and standards for its
26 administration. Within 6 months of the proposal of such rules
27 to the Board, the Board shall adopt, pursuant to Sections 27
28 and 28 of the Environmental Protection Act and any rules
29 adopted thereunder, rules that are consistent with this Act.
30 Nothing in this Act shall preclude, at any time, the
31 recommendation, proposal, or adoption of any other rules deemed
32 necessary for the orderly implementation of this Act.

33 (d) The Committee shall develop a plan for Statewide
34 wetlands protection and shall submit the plan to the State. The
35 State shall seek to obtain a delegation of COE authority under
36 Section 404 of the federal Clean Water Act for all wetlands in

1 Illinois on or before July 1, 2007, in accordance with Section
2 20 of this Act.

3 Section 45. Appeal of final agency decision; judicial
4 review.

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

28 (b) The applicant or the Agency, when adversely affected by
29 a final order or determination of the Board, may obtain
30 judicial review by filing a petition for review within 35 days
31 from the date that a copy of the order or other final action
32 sought to be reviewed was served upon the party affected by the
33 order or other final Board action complained of, under the
34 provisions of the Administrative Review Law and the rules
35 adopted pursuant thereto, except that review shall be afforded

1 directly in the appellate court for the district in which the
2 cause of action arose and not in the circuit court.

3 Section 50. Investigation; enforcement.

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

10 (b) The Agency shall conduct investigations and pursue
11 enforcement of alleged violations of this Act, any rule adopted
12 pursuant to this Act, a permit granted by the Agency, or a term
13 or condition of a permit as prescribed in Section 30 and
14 subsections (a), (b), and (c) of Section 31 of the
15 Environmental Protection Act and any rules adopted pursuant to
16 this Act.

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

20 (d) In hearings before the Board to enforce provisions of
21 this Act, the burden shall be on the Agency to show either that
22 the respondent has violated or threatens to violate any
23 provision of this Act or any rule adopted pursuant to this Act
24 or a permit or term or condition of a permit. If such proof has
25 been made, the burden shall be on the respondent to show that
26 compliance with the Board's rules would impose an arbitrary or
27 unreasonable hardship.

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

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

34 (g) The civil penalties provided for in this Section may be
35 recovered in a civil action, which may be instituted in a court

1 of competent jurisdiction or by determination or order of the
2 Board. The State's Attorney of the county in which the alleged
3 violation occurred, or the Attorney General, may, at the
4 request of the Agency or on his or her own motion, institute a
5 civil action in a court of competent jurisdiction to recover
6 civil penalties and an injunction to restrain violations of the
7 Act.

8 (h) Any person who violates any provision of this Act or
9 any rule adopted pursuant to this Act, or any permit or term or
10 condition thereof, or that violates any determination or order
11 of the Board pursuant to this Act, shall be liable for a civil
12 penalty of not to exceed \$10,000 per day of violation; such
13 penalties may, upon order of the Board or a court of competent
14 jurisdiction, be made payable to the Environmental Protection
15 Trust Fund, to be used in accordance with the provisions of the
16 Environmental Protection Trust Fund Act.

17 (i) In determining the appropriate civil penalty to be
18 imposed under this Section, the Board is authorized to consider
19 any matters of record in mitigation or aggravation of penalty,
20 including but not limited to the following factors:

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

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

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

28 (4) The amount of monetary penalty which will serve to
29 deter further violations by the person and to otherwise aid
30 in enhancing voluntary compliance with this Act by the
31 person and other persons similarly subject to the Act.

32 (5) The number, proximity in time, and gravity of
33 previously adjudicated violations of this Act by the
34 person.

35 (j) A violation of any provision of this Act or any rule
36 adopted pursuant to this Act, or any permit or term or

1 condition thereof, or any violation of any determination or
2 order of the Board pursuant to this Act, shall not be deemed a
3 criminal offense.

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

13 Section 55. Fees.

14 (a) Any person seeking a permit, coverage under a general
15 permit, or filing a notification of activities to be conducted
16 on a Class III wetland from the Agency shall pay a fee to the
17 Agency at the time of filing an application or notification.
18 The following fee amounts shall apply:

19 (1) The fee for a Class IA or Class IB wetland is \$400
20 if the site is less than 1 acre; \$500 if the site is equal
21 to or greater than 1 acre but less than 10 acres; \$750 if
22 the site is equal to or greater than 10 acres but less than
23 50 acres; and \$1,000 if the site is equal to or greater
24 than 50 acres. In the event that the Agency is required to
25 review a mitigation plan for any such site, an additional
26 fee will be required at the time the applicant is notified
27 that such a review is required. The additional mitigation
28 review fee shall be: \$750 if the affected wetland is less
29 than 0.5 acres; \$1000 if the affected wetland is equal to
30 or greater than 0.5 acres but less than 2 acres; \$1250 if
31 the site is equal to or greater than 2 acres but less than
32 5 acres; and \$1,500 if the site is equal to or greater than
33 5 acres.

34 (2) The fee for a Class II wetland shall be calculated
35 at 50% of the fee charged to a Class IA or Class IB

1 wetland.

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

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

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

8 (c) There is hereby created in the State Treasury a special
9 fund to be known as the Wetlands Management Fund. There shall
10 be deposited into the Fund all monies received from the fees
11 collected under subsection (a) of this Section. Pursuant to
12 appropriation, monies from the Fund shall be allocated in
13 amounts deemed necessary to implement this Act and, if
14 sufficient funds are available, for the administration of other
15 permit programs administered by the Agency.

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

19 Section 60. Home rule; delegation of authority.

20 (a) A home rule unit may not regulate wetlands except as
21 provided in subsection (b) and (c) of this Section. This
22 Section is a limitation under subsection (i) of Section 6 of
23 Article VII of the Illinois Constitution on the concurrent
24 exercise by home rule units of powers in functions exercised by
25 the State.

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

31 (c) The provisions of any ordinance or resolution adopted
32 before, on, or after the effective date of this Act of the 93d
33 General Assembly by any unit of local government that impose
34 restrictions or limitations on the identification,
35 classification, notification, permitting, or regulatory

1 criteria for wetlands are invalid, except as authorized by
2 subsection (d) of this Section, and all those existing
3 ordinances and resolutions are declared null and void. This
4 subsection shall not be deemed to be a limitation on any
5 legitimate statutory authority of any unit of local government
6 to regulate flood control or stormwater management, so long as
7 those rules are not more stringent than the rules adopted under
8 Section 40 of this Act.

9 (d) The Agency may enter into written delegation agreements
10 with any county government under which it may delegate all or
11 portions of its inspecting, investigating, and enforcement
12 functions under this Act. In cases where a county government
13 has implemented a wetlands regulation program prior to March 1,
14 2003, the Agency shall, upon the receipt of a request for
15 delegation by such county government, delegate all or portions
16 of its functions under this Act, as requested. Such delegation
17 agreements shall, at a minimum, require that:

18 (1) All of the administrative procedures and
19 operations performed by the delegated county government
20 shall be performed in accordance with the provisions of
21 this Act and with rules adopted pursuant to Section 40 of
22 this Act.

23 (2) The general permits issued under Section 35 of this
24 Act shall be administered by the delegated county
25 government for those activities covered under the general
26 permits.

27 (3) At the time of filing a permit application or
28 notification with a delegated county government, the
29 person shall file a certification with the Agency attesting
30 to such filing.

31 (4) Within 30 days after the delegated county
32 government takes final action on a permit or notification,
33 a copy of the permit or notice action shall be filed with
34 the Agency.

35 (5) Any final action taken by a delegated county
36 government may be appealed in accordance with the

1 provisions of Section 45 of this Act.

2 (e) Notwithstanding any other provision of law to the
3 contrary, no unit of local government shall be liable for any
4 injury resulting from the exercise of its authority pursuant to
5 such a delegation agreement, unless the injury is proximately
6 caused by the willful and wanton negligence of an agent or
7 employee of the unit of local government, and any policy of
8 insurance coverage issued to a unit of local government may
9 provide for the denial of liability and the nonpayment of
10 claims based upon injuries for which the unit of local
11 government is not liable pursuant to this subsection.

12 Section 90. The State Finance Act is amended by adding
13 Section 5.625 as follows:

14 (30 ILCS 105/5.625 new)

15 Sec. 5.625. The Wetlands Management Fund.

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