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LRB094 04219 RSP 42827 a

1 AMENDMENT TO HOUSE BILL 918

2 AMENDMENT NO. _____. Amend House Bill 918 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Environmental Protection Act is amended by
5 changing Section 39.2 as follows:

6 (415 ILCS 5/39.2) (from Ch. 111 1/2, par. 1039.2)

7 Sec. 39.2. Local siting review.

8 (a) The county board of the county or the governing body of
9 the municipality, as determined by paragraph (c) of Section 39
10 of this Act, shall approve or disapprove the request for local
11 siting approval for each pollution control facility which is
12 subject to such review. An applicant for local siting approval
13 shall submit sufficient details describing the proposed
14 facility to demonstrate compliance, and local siting approval
15 shall be granted only if the proposed facility meets the
16 following criteria:

17 (i) the facility is necessary to accommodate the waste
18 needs of the area it is intended to serve;

19 (ii) the facility is so designed, located and proposed
20 to be operated that the public health, safety and welfare
21 will be protected;

22 (iii) the facility is located so as to minimize
23 incompatibility with the character of the surrounding area
24 and to minimize the effect on the value of the surrounding

1 property;

2 (iv) (A) for a facility other than a sanitary landfill
3 or waste disposal site, the facility is located outside the
4 boundary of the 100 year flood plain or the site is
5 flood-proofed; (B) for a facility that is a sanitary
6 landfill or waste disposal site, the facility is located
7 outside the boundary of the 100-year floodplain, or if the
8 facility is a facility described in subsection (b)(3) of
9 Section 22.19a, the site is flood-proofed;

10 (v) the plan of operations for the facility is designed
11 to minimize the danger to the surrounding area from fire,
12 spills, or other operational accidents;

13 (vi) the traffic patterns to or from the facility are
14 so designed as to minimize the impact on existing traffic
15 flows;

16 (vii) if the facility will be treating, storing or
17 disposing of hazardous waste, an emergency response plan
18 exists for the facility which includes notification,
19 containment and evacuation procedures to be used in case of
20 an accidental release;

21 (viii) if the facility is to be located in a county
22 where the county board has adopted a solid waste management
23 plan consistent with the planning requirements of the Local
24 Solid Waste Disposal Act or the Solid Waste Planning and
25 Recycling Act, the facility is consistent with that plan;
26 for purposes of this criterion (viii), the "solid waste
27 management plan" means the plan that is in effect as of the
28 date the application for siting approval is filed; and

29 (ix) if the facility will be located within a regulated
30 recharge area, any applicable requirements specified by
31 the Board for such areas have been met.

32 The county board or the governing body of the municipality
33 may also consider as evidence the previous operating experience
34 and past record of convictions or admissions of violations of

1 the applicant (and any subsidiary or parent corporation) in the
2 field of solid waste management when considering criteria (ii)
3 and (v) under this Section.

4 (b) No later than 14 days before the date on which the
5 county board or governing body of the municipality receives a
6 request for site approval, the applicant shall cause written
7 notice of such request to be served either in person or by
8 registered mail, return receipt requested, on the owners of all
9 property within the subject area not solely owned by the
10 applicant, and on the owners of all property within 250 feet in
11 each direction of the lot line of the subject property, said
12 owners being such persons or entities which appear from the
13 authentic tax records of the County in which such facility is
14 to be located; provided, that the number of all feet occupied
15 by all public roads, streets, alleys and other public ways
16 shall be excluded in computing the 250 feet requirement;
17 provided further, that in no event shall this requirement
18 exceed 400 feet, including public streets, alleys and other
19 public ways.

20 Such written notice shall also be served upon members of
21 the General Assembly from the legislative district in which the
22 proposed facility is located and shall be published in a
23 newspaper of general circulation published in the county in
24 which the site is located.

25 Such notice shall state the name and address of the
26 applicant, the location of the proposed site, the nature and
27 size of the development, the nature of the activity proposed,
28 the probable life of the proposed activity, the date when the
29 request for site approval will be submitted, and a description
30 of the right of persons to comment on such request as hereafter
31 provided.

32 (c) An applicant shall file a copy of its request with the
33 county board of the county or the governing body of the
34 municipality in which the proposed site is located. The request

1 shall include (i) the substance of the applicant's proposal and
2 (ii) all documents, if any, submitted as of that date to the
3 Agency pertaining to the proposed facility, except trade
4 secrets as determined under Section 7.1 of this Act. All such
5 documents or other materials on file with the county board or
6 governing body of the municipality shall be made available for
7 public inspection at the office of the county board or the
8 governing body of the municipality and may be copied upon
9 payment of the actual cost of reproduction.

10 Any person may file written comment with the county board
11 or governing body of the municipality concerning the
12 appropriateness of the proposed site for its intended purpose.
13 The county board or governing body of the municipality shall
14 consider any comment received or postmarked not later than 30
15 days after the date of the last public hearing.

16 (d) At least one public hearing is to be held by the county
17 board or governing body of the municipality no sooner than 90
18 days but no later than 120 days after the date on which it
19 received the request for site approval. No later than 14 days
20 prior to such hearing, notice shall be published in a newspaper
21 of general circulation published in the county of the proposed
22 site, and delivered by certified mail to all members of the
23 General Assembly from the district in which the proposed site
24 is located, to the governing authority of every municipality
25 contiguous to the proposed site or contiguous to the
26 municipality in which the proposed site is to be located, to
27 the county board of the county where the proposed site is to be
28 located, if the proposed site is located within the boundaries
29 of a municipality, and to the Agency. Members or
30 representatives of the governing authority of a municipality
31 contiguous to the proposed site or contiguous to the
32 municipality in which the proposed site is to be located and,
33 if the proposed site is located in a municipality, members or
34 representatives of the county board of a county in which the

1 proposed site is to be located may appear at and participate in
2 public hearings held pursuant to this Section. The public
3 hearing shall develop a record sufficient to form the basis of
4 appeal of the decision in accordance with Section 40.1 of this
5 Act. The fact that a member of the county board or governing
6 body of the municipality has publicly expressed an opinion on
7 an issue related to a site review proceeding shall not preclude
8 the member from taking part in the proceeding and voting on the
9 issue.

10 (e) Decisions of the county board or governing body of the
11 municipality are to be in writing, specifying the reasons for
12 the decision, such reasons to be in conformance with subsection
13 (a) of this Section. In granting approval for a site the county
14 board or governing body of the municipality may impose such
15 conditions as may be reasonable and necessary to accomplish the
16 purposes of this Section and as are not inconsistent with
17 regulations promulgated by the Board. Such decision shall be
18 available for public inspection at the office of the county
19 board or governing body of the municipality and may be copied
20 upon payment of the actual cost of reproduction. If there is no
21 final action by the county board or governing body of the
22 municipality within 180 days after the date on which it
23 received the request for site approval, the applicant may deem
24 the request approved.

25 At any time prior to completion by the applicant of the
26 presentation of the applicant's factual evidence and an
27 opportunity for cross-questioning by the county board or
28 governing body of the municipality and any participants, the
29 applicant may file not more than one amended application upon
30 payment of additional fees pursuant to subsection (k); in which
31 case the time limitation for final action set forth in this
32 subsection (e) shall be extended for an additional period of 90
33 days.

34 If, prior to making a final local siting decision, a county

1 board or governing body of a municipality has negotiated and
2 entered into a host agreement with the local siting applicant,
3 the terms and conditions of the host agreement, whether written
4 or oral, shall be disclosed and made a part of the hearing
5 record for that local siting proceeding. In the case of an oral
6 agreement, the disclosure shall be made in the form of a
7 written summary jointly prepared and submitted by the county
8 board or governing body of the municipality and the siting
9 applicant and shall describe the terms and conditions of the
10 oral agreement.

11 (e-5) Siting approval obtained pursuant to this Section is
12 transferable and may be transferred to a subsequent owner or
13 operator. In the event that siting approval has been
14 transferred to a subsequent owner or operator, that subsequent
15 owner or operator assumes and takes subject to any and all
16 conditions imposed upon the prior owner or operator by the
17 county board of the county or governing body of the
18 municipality pursuant to subsection (e). However, any such
19 conditions imposed pursuant to this Section may be modified by
20 agreement between the subsequent owner or operator and the
21 appropriate county board or governing body. Further, in the
22 event that siting approval obtained pursuant to this Section
23 has been transferred to a subsequent owner or operator, that
24 subsequent owner or operator assumes all rights and obligations
25 and takes the facility subject to any and all terms and
26 conditions of any existing host agreement between the prior
27 owner or operator and the appropriate county board or governing
28 body.

29 (f) A local siting approval granted under this Section
30 shall expire at the end of 2 calendar years from the date upon
31 which it was granted, unless the local siting approval granted
32 under this Section is for a sanitary landfill operation, in
33 which case the approval shall expire at the end of 3 calendar
34 years from the date upon which it was granted, and unless

1 within that period the applicant has made application to the
2 Agency for a permit to develop the site. In the event that the
3 local siting decision has been appealed, such expiration period
4 shall be deemed to begin on the date upon which the appeal
5 process is concluded.

6 Except as otherwise provided in this subsection, upon the
7 expiration of a development permit under subsection (k) of
8 Section 39, any associated local siting approval granted for
9 the facility under this Section shall also expire.

10 If a first development permit for a municipal waste
11 incineration facility expires under subsection (k) of Section
12 39 after September 30, 1989 due to circumstances beyond the
13 control of the applicant, any associated local siting approval
14 granted for the facility under this Section may be used to
15 fulfill the local siting approval requirement upon application
16 for a second development permit for the same site, provided
17 that the proposal in the new application is materially the
18 same, with respect to the criteria in subsection (a) of this
19 Section, as the proposal that received the original siting
20 approval, and application for the second development permit is
21 made before January 1, 1990.

22 (g) The siting approval procedures, criteria and appeal
23 procedures provided for in this Act for new pollution control
24 facilities shall be the exclusive siting procedures and rules
25 and appeal procedures for facilities subject to such
26 procedures. Local zoning or other local land use requirements
27 shall not be applicable to such siting decisions.

28 (h) Nothing in this Section shall apply to any existing or
29 new pollution control facility located within the corporate
30 limits of a municipality with a population of over 1,000,000.

31 (i) (Blank.)

32 The Board shall adopt regulations establishing the
33 geologic and hydrologic siting criteria necessary to protect
34 usable groundwater resources which are to be followed by the

1 Agency in its review of permit applications for new pollution
2 control facilities. Such regulations, insofar as they apply to
3 new pollution control facilities authorized to store, treat or
4 dispose of any hazardous waste, shall be at least as stringent
5 as the requirements of the Resource Conservation and Recovery
6 Act and any State or federal regulations adopted pursuant
7 thereto.

8 (j) Any new pollution control facility which has never
9 obtained local siting approval under the provisions of this
10 Section shall be required to obtain such approval after a final
11 decision on an appeal of a permit denial.

12 (k) A county board or governing body of a municipality may
13 charge applicants for siting review under this Section a
14 reasonable fee to cover the reasonable and necessary costs
15 incurred by such county or municipality in the siting review
16 process.

17 (l) The governing Authority as determined by subsection (c)
18 of Section 39 of this Act may request the Department of
19 Transportation to perform traffic impact studies of proposed or
20 potential locations for required pollution control facilities.

21 (m) An applicant may not file a request for local siting
22 approval which is substantially the same as a request which was
23 disapproved pursuant to a finding against the applicant under
24 any of criteria (i) through (ix) of subsection (a) of this
25 Section within the preceding 2 years.

26 (n) In any review proceeding of a decision of the county
27 board or governing body of a municipality made pursuant to the
28 local siting review process, the petitioner in the review
29 proceeding shall pay to the county or municipality the cost of
30 preparing and certifying the record of proceedings. Should the
31 petitioner in the review proceeding fail to make payment, the
32 provisions of Section 3-109 of the Code of Civil Procedure
33 shall apply.

34 In the event the petitioner is a citizens' group that

1 participated in the siting proceeding and is so located as to
2 be affected by the proposed facility, such petitioner shall be
3 exempt from paying the costs of preparing and certifying the
4 record.

5 (o) Notwithstanding any other provision of this Section, a
6 transfer station used exclusively for landscape waste, where
7 landscape waste is held no longer than 24 hours from the time
8 it was received, is not subject to the requirements of local
9 siting approval under this Section, but is subject only to
10 local zoning approval.

11 (Source: P.A. 91-588, eff. 8-14-99; 92-574, eff. 6-26-02.)

12 Section 98. Applicability. The change made to Section 39.2
13 of the Environmental Protection Act by this amendatory Act of
14 the 94th General Assembly applies only to siting applications
15 filed on or after the effective date of this amendatory Act.

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