



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB2982

Introduced 1/20/2006, by Sen. James F. Clayborne, Jr.

SYNOPSIS AS INTRODUCED:

415 ILCS 5/39.2 from Ch. 111 1/2, par. 1039.2
415 ILCS 5/Tit. XVII-A heading new
415 ILCS 5/58a-1 new
415 ILCS 5/58a-2 new
415 ILCS 5/58a-3 new
415 ILCS 5/58a-4 new
415 ILCS 5/58a-5 new
415 ILCS 5/58a-6 new
415 ILCS 5/58a-7 new
415 ILCS 5/58a-8 new
415 ILCS 115/Act rep.

Amends the Environmental Protection Act. In a Section prescribing standards for granting local siting approval for a pollution control facility, requires those facilities which are not exempt through non-conforming use and other specified exemptions to be in compliance with the applicable land use restrictions in effect as of the date the application for siting approval is filed. Authorizes the Agency to impose a Response Action Land Use Control (RALUC) on real property for land use limitations or requirements related to environmental contamination. Provides that activities or uses that may be limited or required include, but are not limited to, prohibition of the use of groundwater for potable purposes, restriction to industrial or commercial uses, operation or maintenance of engineered barriers, and worker safety plans. Sets forth circumstances in which RALUCs may be used. Prohibits property for which a RALUC has been issued from being used in a manner inconsistent with any land use controls in the RALUC. Provides that a RALUC shall remain in effect in perpetuity unless modified or terminated by the Agency. Sets forth certain elements that must be contained in a RALUC. Requires the RALUC to be recorded in the Office of the Recorder or Registrar of Titles for the county in which the property that is the subject of the RALUC is located. Authorizes civil actions for injunctive or other equitable relief for violation of a RALUC to be maintained by the Agency, State, U.S. Environmental Protection Agency, a municipality or other unit of local government where the real property subject to the RALUC is located, any person to whom the RALUC expressly grants power to enforce, and any person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the RALUC. Repeals the Illinois Pollution Prevention Act. Makes other changes. Effective immediately.

LRB094 19094 RSP 54604 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning safety.

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

4 Section 5. The Environmental Protection Act is amended by
5 changing Section 39.2, and by adding the heading of Title
6 XVII-A and Sections 58a-1, 58a-2, 58a-3, 58a-4, 58a-5, 58a-6,
7 58a-7, and 58a-8, as follows:

8 (415 ILCS 5/39.2) (from Ch. 111 1/2, par. 1039.2)

9 Sec. 39.2. Local siting review.

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

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

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

24 (iii) the facility is located so as to minimize
25 incompatibility with the character of the surrounding area
26 and to minimize the effect on the value of the surrounding
27 property;

28 (iv) (A) for a facility other than a sanitary landfill
29 or waste disposal site, the facility is located outside the
30 boundary of the 100 year flood plain or the site is
31 flood-proofed; (B) for a facility that is a sanitary
32 landfill or waste disposal site, the facility is located

1 outside the boundary of the 100-year floodplain, or if the
2 facility is a facility described in subsection (b)(3) of
3 Section 22.19a, the site is flood-proofed;

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

7 (vi) the traffic patterns to or from the facility are
8 so designed as to minimize the impact on existing traffic
9 flows;

10 (vii) if the facility will be treating, storing or
11 disposing of hazardous waste, an emergency response plan
12 exists for the facility which includes notification,
13 containment and evacuation procedures to be used in case of
14 an accidental release;

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

23 (ix) if the facility will be located within a regulated
24 recharge area, any applicable requirements specified by
25 the Board for such areas have been met; and

26 (x) if the facility is subject to the location
27 restrictions in Section 22.14 of this Act, the facility is
28 in compliance with the applicable land use restrictions in
29 effect for that facility as of the date the application for
30 siting approval is filed.

31 The county board or the governing body of the municipality
32 may also consider as evidence the previous operating experience
33 and past record of convictions or admissions of violations of
34 the applicant (and any subsidiary or parent corporation) in the
35 field of solid waste management when considering criteria (ii)
36 and (v) under this Section.

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

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

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

29 (c) An applicant shall file a copy of its request with the
30 county board of the county or the governing body of the
31 municipality in which the proposed site is located. The request
32 shall include (i) the substance of the applicant's proposal and
33 (ii) all documents, if any, submitted as of that date to the
34 Agency pertaining to the proposed facility, except trade
35 secrets as determined under Section 7.1 of this Act. All such
36 documents or other materials on file with the county board or

1 governing body of the municipality shall be made available for
2 public inspection at the office of the county board or the
3 governing body of the municipality and may be copied upon
4 payment of the actual cost of reproduction.

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

11 (d) At least one public hearing is to be held by the county
12 board or governing body of the municipality no sooner than 90
13 days but no later than 120 days after the date on which it
14 received the request for site approval. No later than 14 days
15 prior to such hearing, notice shall be published in a newspaper
16 of general circulation published in the county of the proposed
17 site, and delivered by certified mail to all members of the
18 General Assembly from the district in which the proposed site
19 is located, to the governing authority of every municipality
20 contiguous to the proposed site or contiguous to the
21 municipality in which the proposed site is to be located, to
22 the county board of the county where the proposed site is to be
23 located, if the proposed site is located within the boundaries
24 of a municipality, and to the Agency. Members or
25 representatives of the governing authority of a municipality
26 contiguous to the proposed site or contiguous to the
27 municipality in which the proposed site is to be located and,
28 if the proposed site is located in a municipality, members or
29 representatives of the county board of a county in which the
30 proposed site is to be located may appear at and participate in
31 public hearings held pursuant to this Section. The public
32 hearing shall develop a record sufficient to form the basis of
33 appeal of the decision in accordance with Section 40.1 of this
34 Act. The fact that a member of the county board or governing
35 body of the municipality has publicly expressed an opinion on
36 an issue related to a site review proceeding shall not preclude

1 the member from taking part in the proceeding and voting on the
2 issue.

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

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

27 If, prior to making a final local siting decision, a county
28 board or governing body of a municipality has negotiated and
29 entered into a host agreement with the local siting applicant,
30 the terms and conditions of the host agreement, whether written
31 or oral, shall be disclosed and made a part of the hearing
32 record for that local siting proceeding. In the case of an oral
33 agreement, the disclosure shall be made in the form of a
34 written summary jointly prepared and submitted by the county
35 board or governing body of the municipality and the siting
36 applicant and shall describe the terms and conditions of the

1 oral agreement.

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

20 (f) A local siting approval granted under this Section
21 shall expire at the end of 2 calendar years from the date upon
22 which it was granted, unless the local siting approval granted
23 under this Section is for a sanitary landfill operation, in
24 which case the approval shall expire at the end of 3 calendar
25 years from the date upon which it was granted, and unless
26 within that period the applicant has made application to the
27 Agency for a permit to develop the site. In the event that the
28 local siting decision has been appealed, such expiration period
29 shall be deemed to begin on the date upon which the appeal
30 process is concluded.

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

35 If a first development permit for a municipal waste
36 incineration facility expires under subsection (k) of Section

1 39 after September 30, 1989 due to circumstances beyond the
2 control of the applicant, any associated local siting approval
3 granted for the facility under this Section may be used to
4 fulfill the local siting approval requirement upon application
5 for a second development permit for the same site, provided
6 that the proposal in the new application is materially the
7 same, with respect to the criteria in subsection (a) of this
8 Section, as the proposal that received the original siting
9 approval, and application for the second development permit is
10 made before January 1, 1990.

11 (g) The siting approval procedures, criteria and appeal
12 procedures provided for in this Act for new pollution control
13 facilities shall be the exclusive siting procedures and rules
14 and appeal procedures for facilities subject to such
15 procedures. Local zoning or other local land use requirements
16 shall not be applicable to such siting decisions.

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

20 (i) (Blank.)

21 The Board shall adopt regulations establishing the
22 geologic and hydrologic siting criteria necessary to protect
23 usable groundwater resources which are to be followed by the
24 Agency in its review of permit applications for new pollution
25 control facilities. Such regulations, insofar as they apply to
26 new pollution control facilities authorized to store, treat or
27 dispose of any hazardous waste, shall be at least as stringent
28 as the requirements of the Resource Conservation and Recovery
29 Act and any State or federal regulations adopted pursuant
30 thereto.

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

35 (k) A county board or governing body of a municipality may
36 charge applicants for siting review under this Section a

1 reasonable fee to cover the reasonable and necessary costs
2 incurred by such county or municipality in the siting review
3 process.

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

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

13 (n) In any review proceeding of a decision of the county
14 board or governing body of a municipality made pursuant to the
15 local siting review process, the petitioner in the review
16 proceeding shall pay to the county or municipality the cost of
17 preparing and certifying the record of proceedings. Should the
18 petitioner in the review proceeding fail to make payment, the
19 provisions of Section 3-109 of the Code of Civil Procedure
20 shall apply.

21 In the event the petitioner is a citizens' group that
22 participated in the siting proceeding and is so located as to
23 be affected by the proposed facility, such petitioner shall be
24 exempt from paying the costs of preparing and certifying the
25 record.

26 (o) Notwithstanding any other provision of this Section, a
27 transfer station used exclusively for landscape waste, where
28 landscape waste is held no longer than 24 hours from the time
29 it was received, is not subject to the requirements of local
30 siting approval under this Section, but is subject only to
31 local zoning approval.

32 (Source: P.A. 94-591, eff. 8-15-05.)

33 (415 ILCS 5/Tit. XVII-A heading new)

34 TITLE XVII-A: RESPONSE ACTION LAND USE CONTROLS

1 (415 ILCS 5/58a-1 new)

2 Sec. 58a-1. Intent. It is the intent of this Title to
3 establish a system for implementing environmental controls
4 relative to the use of land in situations where Title XVII of
5 this Act does not apply, and to assure that environmental
6 controls necessary to protect human health and the environment
7 relative to present and future uses of the site will remain in
8 place as necessary to protect human health and the environment
9 from contamination remaining on the site.

10 (415 ILCS 5/58a-2 new)

11 Sec. 58a-2. Applicability.

12 (a) A Response Action Land Use Control (RALUC) is an
13 institutional control that may be used under this Title to
14 impose land use limitations or requirements related to
15 environmental contamination.

16 (b) RALUCs are effective only when approved by the Agency
17 in accordance with this Title. Activities or uses that may be
18 limited or required include, but are not limited to,
19 prohibition of the use of groundwater for potable purposes,
20 restriction to industrial or commercial uses, operation or
21 maintenance of engineered barriers, and worker safety plans.

22 (c) RALUCs may be used in the following circumstances:

23 (1) when No Further Remediation Letters and
24 Environmental Land Use Controls are not available under the
25 program for which a person is undergoing remediation;

26 (2) when No Further Remediation Letters and
27 Environmental Land Use Controls cannot be issued by the
28 program for which a person is undergoing remediation, such
29 as when remediation efforts have not or will not reach
30 remediation objectives specified in 35 Ill. Adm. Code 742;

31 (3) by the Agency on any abandoned property in the
32 course of conducting preventative, corrective, or remedial
33 response action whenever necessary or appropriate to
34 manage risk to human health or the environment arising from
35 contamination remaining at the property;

1 (4) when an order is issued by the Agency, the Board,
2 or a court of competent jurisdiction under the
3 Environmental Protection Act with respect to real property
4 that is the subject of a response action or a corrective
5 action; or

6 (5) when an order is issued by the U.S. Environmental
7 Protection Agency or a court of competent jurisdiction
8 under the Comprehensive Environmental Response,
9 Compensation and Liability Act of 1980, as amended, or the
10 Resource Conservation and Recovery Act of 1976, as amended,
11 with respect to real property that is the subject of a
12 response action or a corrective action.

13 (415 ILCS 5/58a-3 new)

14 Sec. 58a-3. Prohibition. No person shall use any real
15 property for which a RALUC has been issued under this Title in
16 a manner inconsistent with any land use controls in the RALUC.

17 (415 ILCS 5/58a-4 new)

18 Sec. 58a-4. Effect and duration.

19 (a) Except as provided in this Section, a RALUC shall
20 remain in effect in perpetuity.

21 (b) A RALUC may be modified or terminated, but only if the
22 Agency has approved the modification or termination or the
23 order under which the RALUC was issued has been amended to
24 provide for the modification or termination of the RALUC. The
25 modification or termination of the RALUC shall not be effective
26 until recorded in accordance with Section 58a-6 of this Act.

27 (c) Except as provided in subsection (b) of this Section, a
28 RALUC may not be extinguished, limited, or impaired through
29 issuance of a tax deed, foreclosure of a tax lien, or
30 application of the doctrine of adverse possession,
31 prescription, abandonment, waiver, lack of enforcement, or
32 acquiescence, or a similar doctrine.

33 (415 ILCS 5/58a-5 new)

1 Sec. 58a-5. Contents. A RALUC submitted to the Agency must
2 contain the following elements:

3 (1) the name of the property owners and a declaration
4 of property ownership;

5 (2) identification of the property to which the RALUC
6 applies by common address, legal description, and the Real
7 Estate Tax Property Index Number;

8 (3) a reference to the Agency identification numbers
9 under which the remediation was conducted;

10 (4) a statement of the reason for the land use
11 limitation or requirement relative to protecting human
12 health and the surrounding environment from soil,
13 groundwater, or other environmental contamination;

14 (5) the language instituting the land use limitations
15 or requirements;

16 (6) a statement that the limitations or requirements
17 apply to the current owners, occupants, and all heirs,
18 successors, assigns, and lessees;

19 (7) a statement that the limitations or requirements
20 apply in perpetuity, subject to the modification or
21 termination provisions of Section 58a-4 of this Act;

22 (8) scaled site maps showing:

23 (i) the legal boundary of the property to which the
24 RALUC applies;

25 (ii) the horizontal and vertical extent of
26 contaminants of concern above applicable remediation
27 objectives for soil and groundwater to which the RALUC
28 applies;

29 (iii) any physical features to which a RALUC
30 applies, such as engineered barriers, or monitoring
31 wells; and

32 (iv) the nature, location of the source, and
33 direction of movement of the contaminants of concern;

34 (9) a statement that any information regarding the
35 remediation performed on the property for which the RALUC
36 is necessary may be obtained from the Agency through a

1 request under the Freedom of Information Act and rules
2 promulgated thereunder; and

3 (10) the dated, notarized signatures of the property
4 owners or authorized agent of the property subject to the
5 RALUC, except when the Agency is conducting preventative,
6 corrective, or remedial response action in accordance with
7 Section 58a-2(c) (3) of this Title.

8 (415 ILCS 5/58a-6 new)

9 Sec. 58a-6. Recordation. A RALUC approved by the Agency
10 under this Title must be recorded in the Office of the Recorder
11 or Registrar of Titles for the county in which the property
12 that is the subject of the RALUC is located. A copy of the
13 RALUC demonstrating that it has been recorded must be submitted
14 to the Agency within 30 days after recordation. A RALUC
15 approved under this Title shall not become effective until
16 officially recorded in the chain of title for the real property
17 that is the subject of the RALUC.

18 (415 ILCS 5/58a-7 new)

19 Sec. 58a-7. Enforcement. A civil action for injunctive or
20 other equitable relief, including penalties under the order
21 under which the RALUC was issued, for violation of a RALUC may
22 be maintained by:

23 (1) the Agency or the State of Illinois;

24 (2) the U.S. Environmental Protection Agency;

25 (3) a municipality or other unit of local government
26 where the real property subject to the RALUC is located;

27 (4) any person to whom the RALUC expressly grants power
28 to enforce; or

29 (5) any person whose interest in the real property or
30 whose collateral or liability may be affected by the
31 alleged violation of the RALUC.

32 (415 ILCS 5/58a-8 new)

33 Sec. 58a-8. Validity and effect on other instruments.

1 (a) A RALUC that complies with this Title runs with the
2 land.

3 (b) A RALUC that is otherwise effective is valid and
4 enforceable even if:

5 (1) it is not appurtenant to an interest in real
6 property;

7 (2) it can be or has been assigned to a person other
8 than the original holder (grantee of the RALUC);

9 (3) it is not of a character that has been recognized
10 traditionally at common law;

11 (4) it imposes a negative burden;

12 (5) it imposes an affirmative obligation on a person
13 having an interest in the real property or on the holder;

14 (6) the benefit or burden does not touch or concern the
15 real property;

16 (7) there is no privity of estate or contract;

17 (8) the holder dies, ceases to exist, resigns, or is
18 replaced; or

19 (9) the owner of an interest subject to the RALUC and
20 the holder are the same person.

21 (415 ILCS 115/Act rep.)

22 Section 10. The Illinois Pollution Prevention Act is
23 repealed.

24 Section 99. Effective date. This Act takes effect upon
25 becoming law.