



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2639

Introduced 2/15/2008, by Sen. Don Harmon

SYNOPSIS AS INTRODUCED:

415 ILCS 5/28.5 new

Amends the Environmental Protection Act. Reenacts a Section concerning fast-track rulemaking for the Clean Air Act. Defines a "fast-track" rulemaking proceeding and defines "requires to be adopted" and "federally required". Provides that when the Clean Air Act Amendments of 1990 or another federal statute or regulation requires rules other than identical in substance rules to be adopted, upon request by the Environmental Protection Agency, the Pollution Control Board must adopt rules under fast-track rulemaking requirements. Sets out the form for a fast-track rulemaking proposal. Provides that in any fast-track rulemaking proceeding, the Board must accept evidence and comments on the economic impact of any provision of the rule and must consider the economic impact of the rule. Sets out the procedure for a fast-track rulemaking. Effective immediately.

LRB095 14922 BDD 42851 b

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5 reenacting and changing Section 28.5 (which was repealed on
6 December 31, 2007) as follows:

7 (415 ILCS 5/28.5 new)

8 Sec. 28.5. Clean Air Act rules; fast-track.

9 (a) This Section shall apply solely to the adoption of
10 rules proposed by the Agency and required to be adopted by the
11 State under the Clean Air Act as amended by the Clean Air Act
12 Amendments of 1990 (CAAA).

13 (b) For purposes of this Section, a "fast-track" rulemaking
14 proceeding is a proceeding to promulgate a rule that the CAAA
15 requires to be adopted or a proceeding to promulgate a rule
16 that is otherwise federally required to address a CAAA
17 requirement. For purposes of this Section, "requires to be
18 adopted" refers only to those regulations or parts of
19 regulations for which the United States Environmental
20 Protection Agency is empowered to impose sanctions against the
21 State for failure to adopt such rules, and "federally required"
22 means a rule that, if not adopted, could result in the
23 imposition of a federal plan, federal implementation plan, or

1 other type of sanction. All fast-track rules must be adopted
2 under procedures set forth in this Section, unless another
3 provision of this Act specifies the method for adopting a
4 specific rule.

5 (c) When the CAAA or another federal statute or regulation
6 requires rules other than identical in substance rules to be
7 adopted, upon request by the Agency, the Board must adopt rules
8 under fast-track rulemaking requirements.

9 (d) The Agency must submit its fast-track rulemaking
10 proposal in the following form:

11 (1) The Agency must file the rule in a form that meets
12 the requirements of the Illinois Administrative Procedure
13 Act and regulations promulgated thereunder.

14 (2) The cover sheet of the proposal shall prominently
15 state that the rule is being proposed under this Section.

16 (3) The proposal shall clearly identify the provisions
17 and portions of the federal statute, regulations,
18 guidance, policy statement, or other documents upon which
19 the rule is based.

20 (4) The supporting documentation for the rule shall
21 summarize the basis of the rule.

22 (5) The Agency must describe in general the alternative
23 selected and the basis for the alternative.

24 (6) The Agency must file a summary of economic and
25 technical data upon which it relied in drafting the rule.

26 (7) The Agency must provide a list of any documents

1 upon which it directly relied in drafting the rule or upon
2 which it intends to rely at the hearings and must provide
3 such documents to the Board. Additionally, the Agency must
4 make such documents available at an appropriate location
5 for inspection and copying at the expense of the interested
6 party.

7 (8) The Agency must include in its submission a
8 description of the geographical area to which the rule is
9 intended to apply, a description of the process or
10 processes affected, an identification by classes of the
11 entities expected to be affected, and a list of sources
12 expected to be affected by the rule to the extent known to
13 the Agency.

14 (e) Within 14 days of receipt of the proposal, the Board
15 must file the rule for first notice under the Illinois
16 Administrative Procedure Act and must schedule all required
17 hearings on the proposal and cause public notice to be given in
18 accordance with the Illinois Administrative Procedure Act and
19 the CAAA.

20 (f) The Board must set 3 hearings on the proposal, each of
21 which shall be scheduled to continue from day to day, excluding
22 weekends and State and federal holidays, until completed. The
23 Board must require the written submission of all testimony at
24 least 10 days before a hearing, with simultaneous service to
25 all participants of record in the proceeding as of 15 days
26 prior to hearing, unless a waiver is granted by the Board for

1 good cause. In order to further expedite the hearings,
2 presubmitted testimony shall be accepted into the record
3 without the reading of the testimony at hearing, provided that
4 the witness swears to the testimony and is available for
5 questioning, and the Board must make every effort to conduct
6 the proceedings expeditiously and avoid duplication and
7 extraneous material.

8 (1) The first hearing shall be held within 55 days of
9 receipt of the rule and shall be confined to testimony by
10 and questions of the Agency's witnesses concerning the
11 scope, applicability, and basis of the rule. Within 7 days
12 after the first hearing, any person may request that the
13 second hearing be held.

14 (A) If, after the first hearing, the Agency and
15 affected entities are in agreement on the rule, the
16 United States Environmental Protection Agency has not
17 informed the Board of any unresolved objection to the
18 rule, and no other interested party contests the rule
19 or asks for the opportunity to present additional
20 evidence, the Board may cancel the additional
21 hearings. When the Board adopts the final order under
22 these circumstances, it shall be based on the Agency's
23 proposal as agreed to by the parties.

24 (B) If, after the first hearing, the Agency and
25 affected entities are in agreement upon a portion of
26 the rule, the United States Environmental Protection

1 Agency has not informed the Board of any unresolved
2 objections to that agreed portion of the rule, and no
3 other interested party contests that agreed portion of
4 the rule or asks for the opportunity to present
5 additional evidence, the Board must proceed to the
6 second hearing, as provided in paragraph (2) of
7 subsection (g) of this Section, but the hearing shall
8 be limited in scope to the unresolved portion of the
9 proposal. When the Board adopts the final order under
10 these circumstances, it shall be based on such portion
11 of the Agency's proposal as agreed to by the parties.

12 (2) The second hearing shall be scheduled to commence
13 within 30 days of the first day of the first hearing and
14 shall be devoted to presentation of testimony, documents,
15 and comments by affected entities and all other interested
16 parties.

17 (3) The third hearing shall be scheduled to commence
18 within 14 days after the first day of the second hearing
19 and shall be devoted solely to any Agency response to the
20 material submitted at the second hearing and to any
21 response by other parties. The third hearing shall be
22 cancelled if the Agency indicates to the Board that it does
23 not intend to introduce any additional material.

24 (g) In any fast-track rulemaking proceeding, the Board must
25 accept evidence and comments on the economic impact of any
26 provision of the rule and must consider the economic impact of

1 the rule based on the record. The Board may order an economic
2 impact study in a manner that will not prevent adoption of the
3 rule within the time required by subsection (n) of this
4 Section.

5 (h) In all fast-track rulemakings under this Section, the
6 Board must take into account factors set forth in subsection
7 (a) of Section 27 of this Act.

8 (i) The Board must adopt rules in the fast-track rulemaking
9 docket under the requirements of this Section that the CAAA
10 requires to be adopted, and may consider a non-required rule in
11 a second docket that shall proceed under Title VII of this Act.

12 (j) The Board is directed to take whatever measures are
13 available to it to complete fast-track rulemaking as
14 expeditiously as possible consistent with the need for careful
15 consideration. These measures shall include, but not be limited
16 to, having hearings transcribed on an expedited basis.

17 (k) Following the hearings, the Board must close the record
18 14 days after the availability of the transcript.

19 (l) The Board must not revise or otherwise change an Agency
20 fast-track rulemaking proposal without agreement of the Agency
21 until after the end of the hearing and comment period. Any
22 revisions to an Agency proposal shall be based on the record of
23 the proceeding.

24 (m) All rules adopted by the Board under this Section shall
25 be based solely on the record before it.

26 (n) The Board must complete a fast-track rulemaking by

1 adopting a second notice order no later than 130 days after
2 receipt of the proposal if no third hearing is held and no
3 later than 150 days if the third hearing is held. If the order
4 includes a rule, the Illinois Board must file the rule for
5 second notice under the Illinois Administrative Procedure Act
6 within 5 days after adoption of the order.

7 (o) Upon receipt of a statement of no objection to the rule
8 from the Joint Committee on Administrative Rules, the Board
9 must adopt the final order and submit the rule to the Secretary
10 of State for publication and certification within 21 days.

11 Section 99. Effective date. This Act takes effect upon
12 becoming law.