



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2640

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

SYNOPSIS AS INTRODUCED:

5 ILCS 100/1-5
415 ILCS 5/40.2

from Ch. 127, par. 1001-5
from Ch. 111 1/2, par. 1040.2

Amends the Illinois Administrative Procedure Act and the Environmental Protection Act. Provides that the Illinois Administrative Procedure Act shall not apply to certain Clean Air Act Permitting Program permits issued by the Environmental Protection Agency. Effective immediately.

LRB095 12681 CMK 37996 b

1 AN ACT concerning government.

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

4 Section 5. The Illinois Administrative Procedure Act is
5 amended by changing Section 1-5 as follows:

6 (5 ILCS 100/1-5) (from Ch. 127, par. 1001-5)

7 Sec. 1-5. Applicability.

8 (a) This Act applies to every agency as defined in this
9 Act. Beginning January 1, 1978, in case of conflict between the
10 provisions of this Act and the Act creating or conferring power
11 on an agency, this Act shall control. If, however, an agency
12 (or its predecessor in the case of an agency that has been
13 consolidated or reorganized) has existing procedures on July 1,
14 1977, specifically for contested cases or licensing, those
15 existing provisions control, except that this exception
16 respecting contested cases and licensing does not apply if the
17 Act creating or conferring power on the agency adopts by
18 express reference the provisions of this Act. Where the Act
19 creating or conferring power on an agency establishes
20 administrative procedures not covered by this Act, those
21 procedures shall remain in effect.

22 (b) The provisions of this Act do not apply to (i)
23 preliminary hearings, investigations, or practices where no

1 final determinations affecting State funding are made by the
2 State Board of Education, (ii) legal opinions issued under
3 Section 2-3.7 of the School Code, (iii) as to State colleges
4 and universities, their disciplinary and grievance
5 proceedings, academic irregularity and capricious grading
6 proceedings, and admission standards and procedures, and (iv)
7 the class specifications for positions and individual position
8 descriptions prepared and maintained under the Personnel Code.
9 Those class specifications shall, however, be made reasonably
10 available to the public for inspection and copying. The
11 provisions of this Act do not apply to hearings under Section
12 20 of the Uniform Disposition of Unclaimed Property Act.

13 (c) Section 5-35 of this Act relating to procedures for
14 rulemaking does not apply to the following:

15 (1) Rules adopted by the Pollution Control Board that,
16 in accordance with Section 7.2 of the Environmental
17 Protection Act, are identical in substance to federal
18 regulations or amendments to those regulations
19 implementing the following: Sections 3001, 3002, 3003,
20 3004, 3005, and 9003 of the Solid Waste Disposal Act;
21 Section 105 of the Comprehensive Environmental Response,
22 Compensation, and Liability Act of 1980; Sections 307(b),
23 307(c), 307(d), 402(b)(8), and 402(b)(9) of the Federal
24 Water Pollution Control Act; and Sections 1412(b),
25 1414(c), 1417(a), 1421, and 1445(a) of the Safe Drinking
26 Water Act.

1 (2) Rules adopted by the Pollution Control Board that
2 establish or amend standards for the emission of
3 hydrocarbons and carbon monoxide from gasoline powered
4 motor vehicles subject to inspection under Section 13A-105
5 of the Vehicle Emissions Inspection Law and rules adopted
6 under Section 13B-20 of the Vehicle Emissions Inspection
7 Law of 1995.

8 (3) Procedural rules adopted by the Pollution Control
9 Board governing requests for exceptions under Section 14.2
10 of the Environmental Protection Act.

11 (4) The Pollution Control Board's grant, pursuant to an
12 adjudicatory determination, of an adjusted standard for
13 persons who can justify an adjustment consistent with
14 subsection (a) of Section 27 of the Environmental
15 Protection Act.

16 (5) Rules adopted by the Pollution Control Board that
17 are identical in substance to the regulations adopted by
18 the Office of the State Fire Marshal under clause (ii) of
19 paragraph (b) of subsection (3) of Section 2 of the
20 Gasoline Storage Act.

21 (d) Pay rates established under Section 8a of the Personnel
22 Code shall be amended or repealed pursuant to the process set
23 forth in Section 5-50 within 30 days after it becomes necessary
24 to do so due to a conflict between the rates and the terms of a
25 collective bargaining agreement covering the compensation of
26 an employee subject to that Code.

1 (e) Section 10-45 of this Act shall not apply to any
2 hearing, proceeding, or investigation conducted under Section
3 13-515 of the Public Utilities Act.

4 (f) Article 10 of this Act does not apply to any hearing,
5 proceeding, or investigation conducted by the State Council for
6 the State of Illinois created under Section 3-3-11.05 of the
7 Unified Code of Corrections or by the Interstate Commission for
8 Adult Offender Supervision created under the Interstate
9 Compact for Adult Offender Supervision.

10 (g) This Act is subject to the provisions of Article XXI of
11 the Public Utilities Act. To the extent that any provision of
12 this Act conflicts with the provisions of that Article XXI, the
13 provisions of that Article XXI control.

14 (h) Section 10-65(b) of this Act shall not apply to any
15 Clean Air Act Permitting Program permit issued by the Illinois
16 Environmental Protection Agency under Section 39.5 of the
17 Environmental Protection Act.

18 (Source: P.A. 95-9, eff. 6-30-07.)

19 Section 10. The Environmental Protection Act is amended by
20 changing Section 40.2 as follows:

21 (415 ILCS 5/40.2) (from Ch. 111 1/2, par. 1040.2)

22 Sec. 40.2. Application of review process.

23 (a) Subsection (a) of Section 40 does not apply to any
24 permit which is subject to Section 39.5. If the Agency refuses

1 to grant or grants with conditions a CAAPP permit, makes a
2 determination of incompleteness regarding a submitted CAAPP
3 application, or fails to act on an application for a CAAPP
4 permit, permit renewal, or permit revision within the time
5 specified in paragraph 5(j) of Section 39.5 of this Act, the
6 applicant, any person who participated in the public comment
7 process pursuant to subsection 8 of Section 39.5 of this Act,
8 or any other person who could obtain judicial review pursuant
9 to Section 41(a) of this Act, may, within 35 days after final
10 permit action, petition for a hearing before the Board to
11 contest the decision of the Agency. However, the 35-day period
12 for petitioning for a hearing may be extended by the applicant
13 for an additional period of time not to exceed 90 days by
14 written notice provided to the Board from the applicant and the
15 Agency within the initial appeal period. If another person with
16 standing to appeal wishes to obtain an extension, there must be
17 a written notice provided to the Board by that person, the
18 Agency, and the applicant, within the initial appeal period.
19 Notwithstanding the preceding requirements, petitions for a
20 hearing before the Board under this subsection may be filed
21 after the 35-day period, only if such petitions are based
22 solely on grounds arising after the 35-day period expires. Such
23 petitions shall be filed within 35 days after the new grounds
24 for review arise. If the final permit action being challenged
25 is the Agency's failure to take final action, a petition for a
26 hearing before the Board shall be filed before the Agency

1 denies or issues the final permit.

2 The Agency shall appear as respondent in such hearing. At
3 such hearing the rules prescribed in Sections 32 and 33(a) of
4 this Act shall apply, and the burden of proof shall be on the
5 petitioner.

6 (b) The Agency's failure to take final action within 90
7 days of receipt of an application requesting minor permit
8 modification procedures (or 180 days for modifications subject
9 to group processing requirements), pursuant to subsection 14 of
10 Section 39.5, will be subject to this Section and Section 41 of
11 this Act.

12 (c) If there is no final action by the Board within 120
13 days after the date on which it received the petition, the
14 permit shall not be deemed issued; rather, the petitioner shall
15 be entitled to an Appellate Court order pursuant to Section
16 41(d) of this Act. The period of 120 days shall not run for any
17 period of time, not to exceed 30 days, during which the Board
18 is without sufficient membership to constitute the quorum
19 required by subsection (a) of Section 5 of this Act; the 120
20 day period shall not be stayed for lack of quorum beyond 30
21 days, regardless of whether the lack of quorum exists at the
22 beginning of the 120 day period or occurs during the running of
23 the 120 day period.

24 (d) Any person who files a petition to contest the final
25 permit action by the Agency under this Section shall pay a
26 filing fee.

1 (e) The Agency shall notify USEPA, in writing, of any
2 petition for hearing brought under this Section involving a
3 provision or denial of a Phase II acid rain permit within 30
4 days of the filing of the petition. USEPA may intervene as a
5 matter of right in any such hearing. The Agency shall notify
6 USEPA, in writing, of any determination or order in a hearing
7 brought under this Section that interprets, voids, or otherwise
8 relates to any portion of a Phase II acid rain permit.

9 (f) Section 10-65(b) of the Illinois Administrative
10 Procedure Act does not apply to any CAAPP permit issued by the
11 Agency under Section 39.5 of this Act.

12 (Source: P.A. 91-357, eff. 7-29-99; 92-574, eff. 6-26-02.)

13 Section 99. Effective date. This Act takes effect upon
14 becoming law.