

# SB1673



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

SB1673

Introduced 2/20/2015, by Sen. Heather A. Steans

#### SYNOPSIS AS INTRODUCED:

415 ILCS 5/28.5

Amends the Environmental Protection Act. Extends a provision concerning Environmental Protection Agency fast-track rulemaking from December 31, 2014 to December 31, 2019. Effective immediately.

LRB099 09842 MGM 30054 b

A BILL FOR

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 28.5 as follows:

6 (415 ILCS 5/28.5)

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

8 (a) This Section applies through December 31, 2019 ~~2014~~ and  
9 applies solely to the adoption of rules proposed by the Agency  
10 and required to be adopted by the State under the Clean Air Act  
11 as amended by the Clean Air Act Amendments of 1990 (CAAA).

12 (b) For purposes of this Section, a "fast-track" rulemaking  
13 proceeding is a proceeding to promulgate a rule that the CAAA  
14 requires to be adopted. For the purposes of this Section,  
15 "requires to be adopted" refers only to those regulations or  
16 parts of regulations for which the United States Environmental  
17 Protection Agency is empowered to impose sanctions against the  
18 State for failure to adopt such rules. All fast-track rules  
19 must be adopted under procedures set forth in this Section,  
20 unless another provision of this Act specifies the method for  
21 adopting a specific rule.

22 (c) When the CAAA requires rules other than identical in  
23 substance rules to be adopted, upon request by the Agency, the

1 Board must adopt rules under fast-track rulemaking  
2 requirements.

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

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

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

10 (3) The proposal shall clearly identify the provisions  
11 and portions of the federal statute, regulations,  
12 guidance, policy statement, or other documents upon which  
13 the rule is based.

14 (4) The supporting documentation for the rule shall  
15 summarize the basis of the rule.

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

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

20 (7) The Agency must provide a list of any documents  
21 upon which it directly relied in drafting the rule or upon  
22 which it intends to rely at the hearings and must provide  
23 such documents to the Board. Additionally, the Agency must  
24 make such documents available at an appropriate location  
25 for inspection and copying at the expense of the interested  
26 party.

1           (8) The Agency must include in its submission a  
2 description of the geographical area to which the rule is  
3 intended to apply, a description of the process or  
4 processes affected, an identification by classes of the  
5 entities expected to be affected, and a list of sources  
6 expected to be affected by the rule to the extent known to  
7 the Agency.

8           (e) Within 14 days of receipt of the proposal, the Board  
9 must file the rule for first notice under the Illinois  
10 Administrative Procedure Act and must schedule all required  
11 hearings on the proposal and cause public notice to be given in  
12 accordance with the Illinois Administrative Procedure Act and  
13 the CAAA.

14           (f) The Board must set 3 hearings on the proposal, each of  
15 which shall be scheduled to continue from day to day, excluding  
16 weekends and State and federal holidays, until completed. The  
17 Board must require the written submission of all testimony at  
18 least 10 days before a hearing, with simultaneous service to  
19 all participants of record in the proceeding as of 15 days  
20 prior to hearing, unless a waiver is granted by the Board for  
21 good cause. In order to further expedite the hearings,  
22 presubmitted testimony shall be accepted into the record  
23 without the reading of the testimony at hearing, provided that  
24 the witness swears to the testimony and is available for  
25 questioning, and the Board must make every effort to conduct  
26 the proceedings expeditiously and avoid duplication and

1 extraneous material.

2 (1) The first hearing shall be held within 55 days of  
3 receipt of the rule and shall be confined to testimony by  
4 and questions of the Agency's witnesses concerning the  
5 scope, applicability, and basis of the rule. Within 7 days  
6 after the first hearing, any person may request that the  
7 second hearing be held.

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

18 (B) If, after the first hearing, the Agency and  
19 affected entities are in agreement upon a portion of  
20 the rule, the United States Environmental Protection  
21 Agency has not informed the Board of any unresolved  
22 objections to that agreed portion of the rule, and no  
23 other interested party contests that agreed portion of  
24 the rule or asks for the opportunity to present  
25 additional evidence, the Board must proceed to the  
26 second hearing, as provided in paragraph (2) of

1 subsection (g) of this Section, but the hearing shall  
2 be limited in scope to the unresolved portion of the  
3 proposal. When the Board adopts the final order under  
4 these circumstances, it shall be based on such portion  
5 of the Agency's proposal as agreed to by the parties.

6 (2) The second hearing shall be scheduled to commence  
7 within 30 days of the first day of the first hearing and  
8 shall be devoted to presentation of testimony, documents,  
9 and comments by affected entities and all other interested  
10 parties.

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

18 (g) In any fast-track rulemaking proceeding, the Board must  
19 accept evidence and comments on the economic impact of any  
20 provision of the rule and must consider the economic impact of  
21 the rule based on the record. The Board may order an economic  
22 impact study in a manner that will not prevent adoption of the  
23 rule within the time required by subsection (n) of this  
24 Section.

25 (h) In all fast-track rulemakings under this Section, the  
26 Board must take into account factors set forth in subsection

1 (a) of Section 27 of this Act.

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

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

11 (k) Following the hearings, the Board must close the record  
12 14 days after the availability of the transcript.

13 (l) The Board must not revise or otherwise change an Agency  
14 fast-track rulemaking proposal without agreement of the Agency  
15 until after the end of the hearing and comment period. Any  
16 revisions to an Agency proposal shall be based on the record of  
17 the proceeding.

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

20 (n) The Board must complete a fast-track rulemaking by  
21 adopting a second notice order no later than 130 days after  
22 receipt of the proposal if no third hearing is held and no  
23 later than 150 days if the third hearing is held. If the order  
24 includes a rule, the Illinois Board must file the rule for  
25 second notice under the Illinois Administrative Procedure Act  
26 within 5 days after adoption of the order.

1           (o) Upon receipt of a statement of no objection to the rule  
2           from the Joint Committee on Administrative Rules, the Board  
3           must adopt the final order and submit the rule to the Secretary  
4           of State for publication and certification within 21 days.  
5           (Source: P.A. 96-308, eff. 8-11-09.)

6           Section 99. Effective date. This Act takes effect upon  
7           becoming law.