

1 AMENDMENT TO HOUSE BILL 6013

2 AMENDMENT NO. _____. Amend House Bill 6013 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Wetlands Protection Act.

6 Section 5. Findings and goals. Wetlands of this State
7 are indispensable and fragile resources. In their natural
8 state, wetlands reduce pollution and nutrients from a broad
9 range of sources, store and convey flood waters, reduce
10 erosion, provide waterfowl nesting and feeding areas, provide
11 fish habitats and habitats for rare and endangered plant and
12 animal species, provide bird watching and outdoor recreation
13 opportunities, and provide education and scientific study
14 opportunities. Wetlands play critical roles in water resource
15 protection and watershed management.

16 More than 7 million acres of these important resources
17 have been destroyed by filling, draining, dredging, and other
18 activities in this State. In addition, development located in
19 altered wetlands is often subject to problems such as
20 flooding, erosion, and poor soil condition. Filling or
21 draining wetlands in one area can cause increased flooding
22 and erosion in other areas.

1 It is, therefore, the goal of this State to ensure that
2 no further loss of wetland functions and acreage occur and to
3 ensure that activities in wetlands will not increase hazards.
4 Further, it is the policy of this State to facilitate
5 beneficial economic development, to reduce duplication and
6 ensure coordination in wetland programs, and to encourage the
7 integration of wetland protection and restoration into local
8 comprehensive land management and watershed management
9 programs including floodplain and stormwater, pollution
10 control, source water, and other programs. Protection and
11 restoration of wetland resources shall be a joint
12 responsibility of the State, local units of government, the
13 federal government, and private citizens.

14 Section 8. Scope. This Act shall not apply to property
15 within a municipality with a population over 500,000 where
16 the regulation of wetlands on that property is within the
17 statutory or home rule authority of the municipality.

18 Section 10. Definitions. The following definitions shall
19 apply throughout this Act:

20 "Agency" means the Illinois Environmental Protection
21 Agency.

22 "Department" means the Illinois Department of Natural
23 Resources.

24 "Person" means any individual, group of individuals,
25 association, firm, partnership, corporation, trust, estate,
26 organization, or legal entity of any kind, including
27 governmental corporations.

28 "Regulated activity" means any activity conducted within
29 a wetland or a regulated buffer area that may decrease
30 wetland functions, including discharge of fill material,
31 excavating, draining, impounding, and dredging.

32 "State regulated activity" means any regulated activity

1 that is not exempted from regulation under this Act by
2 Section 70 of this Act.

3 "Wetland" means those areas that are inundated or
4 saturated by surface or ground water at a frequency and
5 duration sufficient to support, and that under normal
6 circumstances do support, a prevalence of vegetation
7 typically adapted for life in saturated soil conditions.
8 Wetlands generally include swamps, marshes, bogs, fens, and
9 similar areas.

10 Section 12. Wetland delineations. Wetland delineations
11 shall be made in accordance with the 1987 United States Army
12 Corps of Engineers wetland delineation manual and any other
13 procedures and requirements adopted by the United States Army
14 Corps of Engineers for delineating wetlands.

15 Section 15. Implementation.

16 (a) The Department shall implement a program for the
17 protection and restoration of wetlands in Illinois consistent
18 with the goals, procedures, and criteria set forth in this
19 Act. This program shall be carried out cooperatively with
20 other state agencies, federal agencies, local governments,
21 land trusts, landowners, and other interested groups and
22 organizations. In carrying out this program the Department
23 may:

24 (1) Adopt wetland maps as set forth in Section 20.

25 (2) Adopt rules necessary to administer the
26 requirements of this Act. The Department may implement
27 this Act through the use of emergency rules in accordance
28 with the provisions of Section 5-45 of the Illinois
29 Administrative Procedure Act. For purposes of the
30 Illinois Administrative Procedure Act, the adoption of
31 rules to implement this Act shall be deemed an emergency
32 and necessary for the public interest, safety, and

1 welfare.

2 (3) Provide technical assistance and training to
3 help local governments develop wetland protection and
4 restoration programs and to help local governments
5 integrate wetland protection and restoration into
6 comprehensive land planning and management efforts
7 including floodplain and stormwater management, pollution
8 control, source water planning, greenway, open space, and
9 other efforts.

10 (4) Encourage and provide guidance with regard to
11 the restoration of wetlands.

12 (5) Adopt joint permit processing procedures with
13 federal, other state, and local agencies with
14 jurisdiction over wetlands and take other measures to
15 improve coordination and reduce duplication between the
16 regulatory agency and other state agencies, federal
17 agencies, and local governments.

18 (b) The Agency shall propose water quality standards for
19 wetlands to the Illinois Pollution Control Board by December
20 31, 2006.

21 (c) The Pollution Control Board shall adopt water
22 quality standards for wetlands. In adopting the water
23 quality standards, the Illinois Pollution Control Board shall
24 give adequate consideration to the proposals submitted by the
25 Agency.

26 Section 20. Mapping. The Department may adopt wetland
27 maps for Illinois. The Department shall, upon the written
28 request of a landowner, delineate more precisely the wetland
29 boundaries of any wetland on the landowner's property. The
30 Department may require information from the landowner or
31 other agencies or organizations to aid in the delineation
32 effort. The Department may require that the landowner pay a
33 reasonable fee for the requested delineation. The validity of

1 the delineation shall expire after 2 years.

2 Section 25. Permits.

3 (a) Unless exempted under Section 70, no person may
4 conduct or cause to be conducted a regulated activity within
5 or affecting a wetland without a permit from the Department.
6 Any person proposing to conduct or cause to be conducted a
7 state regulated activity shall file an application for a
8 permit with the Department. The Department shall determine
9 the number of copies of the application that the applicant
10 shall submit, and shall forward one copy to the Agency. The
11 applicant shall provide within 10 days of filing a permit
12 application a written notice of the permit application to the
13 owners of each tract of property adjacent to the property
14 containing the wetland that is the subject of the permit. The
15 applicant shall also post a notice of the proposed permit,
16 within 10 days of the filing of the application, in a local
17 newspaper of general circulation.

18 (b) A permit applicant shall include the following
19 information in the application, unless the Department
20 determines that a portion of this information is unnecessary:

21 (1) A map of the area that will be affected by the
22 activity, including wetland and water boundaries for the
23 areas affected and the existing uses and structures.

24 (2) A description of the proposed activity,
25 including its purpose, the location and dimensions of any
26 structures, grading or fills, drainage, roads, sewers and
27 water supply, parking lots, storm water facilities,
28 discharge of pollutants, and onsite waste disposal.

29 (3) A description of any public benefit to be
30 derived from the proposed project.

31 (4) A description of the entire parcel owned by the
32 applicant, including a topographical survey of the
33 property and a sketch map indicating the location of the

1 wetland on the parcel.

2 (5) A description of any natural hazards at the
3 site, including flood, erosion, and soil bearing capacity
4 hazards, and an indication of how the applicant will
5 avoid increasing hazards on other lands and avoid hazard
6 losses associated with the proposed activity.

7 (6) An explanation of other alternatives the
8 applicant has considered, why the proposed activity
9 cannot be located at other sites, and why other
10 alternatives cannot be used to fulfill the desired
11 purpose of the proposed activity.

12 (7) The names and addresses of adjacent landowners
13 as determined by the current tax assessment roles and a
14 description of adjacent uses and their distance from the
15 proposed activity.

16 (8) Proposed measures to reduce the impact of the
17 proposed activity on wetland functions and values and to
18 compensate for impacts.

19 (c) The Department may require additional information
20 where that information is needed to determine the compliance
21 of the proposed activity with the criteria for issuance of a
22 permit. Where informational deficiencies are apparent in the
23 application, the Department shall advise the applicant of the
24 need for additional information within 30 days of the receipt
25 of the application.

26 (d) Upon receipt of a permit application, the Department
27 shall notify, within 10 days, other state, federal, and local
28 government entities that may have jurisdiction over the
29 proposed activity, as well as any other persons or entities
30 that have requested to receive notification of wetland permit
31 applications from the Department. All people and entities so
32 notified shall have 30 days from the date of the Department's
33 notification to provide comments to the Department.

34 (e) The Department shall also hold a public hearing

1 concerning the permit application if the proposed activity
2 may have significant impact upon wetland resources or if the
3 Department determines that a public hearing is otherwise
4 appropriate.

5 (f) If the Department does not hold a public hearing
6 concerning the permit application under subsection (e) of
7 this Section, the Department shall issue, conditionally
8 issue, or deny a permit within 120 days of receipt of a
9 permit application unless the permit applicant has failed to
10 supply needed information or additional information gathering
11 is needed to determine the compliance of the permit with
12 regulatory criteria.

13 If the Department holds a public hearing concerning the
14 permit application under subsection (e) of this Section, the
15 Department shall issue, conditionally issue, or deny a permit
16 within 180 days of receipt of a permit application unless the
17 permit applicant has failed to supply needed information or
18 additional information gathering is needed to determine the
19 compliance of the permit with regulatory criteria.

20 (g) In granting a permit, the Department may impose
21 conditions that must be carried out to meet the goals of this
22 Act and the permit criteria. The Department may suspend or
23 revoke a permit if it finds that the applicant has not
24 complied with the conditions or limitations set forth in the
25 permit. The Department may require a bond in an amount and
26 with surety and conditions sufficient to secure compliance
27 with the conditions and limitations set forth in the permit.

28 (h) Except for the notification guidelines in
29 subsections (a) and (d) of this Section, the applicant and
30 the Department may agree to extend any deadline in this
31 Section.

32 Section 30. Permit fees. The Department shall establish
33 permit application fees by rule. All fees collected by the

1 Department under this Section shall be deposited into the
2 Wetlands Protection Fund.

3 Section 35. Criteria for issuance of permits

4 (a) The Department shall issue a permit if it finds that
5 the proposed activity is in the public interest.

6 (b) In determining whether a proposed activity is in the
7 public interest, the Department shall consider the goals of
8 this Act and any more specific criteria for permit issuance
9 adopted by the Department. The Department shall also consider
10 the need for the proposed activity and the impact on the
11 landowner of permit denial. To find that a proposed activity
12 is in the public interest, the Department must find that:

13 (1) There will be no net loss of wetland function.

14 At a minimum, this shall require findings that there will
15 be no net loss of:

16 (a) wetland habitat for breeding, nesting,
17 foraging, resting, or protection of any species,
18 including those species on the federal or State list
19 of threatened, endangered, or rare species;

20 (b) stormwater and floodwater retention
21 capacity;

22 (c) groundwater recharge capacity;

23 (d) ability to improve water quality through
24 sedimentation, filtration, biological treatment, or
25 other functions; and

26 (e) recreational opportunities such as hunting
27 or fishing.

28 (2) There will be no net loss of wetland acreage.

29 (3) The proposed activity will not cause flooding,
30 erosion, or other hazards that will threaten other
31 landowners or the public.

32 (4) An adequate upland buffer will be provided to
33 protect remaining wetland acres from sediment,

1 pollutants, and other threats. This buffer must be at
2 least 50 feet, except as otherwise provided in the
3 criteria adopted by the Department. The buffer width for
4 a development site may be varied to a minimum of 1/2 of
5 the required buffer width provided that the total
6 required buffer area is achieved.

7 (5) The Agency has certified that the proposed
8 activity will not cause or contribute to a violation of
9 any State water quality standards.

10 (6) The proposed activity will not otherwise
11 threaten health and safety, cause nuisances, impair
12 public rights to the enjoyment and use of public waters,
13 or threaten a rare or endangered plant or animal or a
14 unique ecosystem.

15 (7) The applicant has shown that there are no
16 practicable alternatives to the proposed activity that
17 would result in less environmental harm.

18 (8) Any adverse impacts will be minimized.

19 (c) In evaluating the impact of the proposed permit, the
20 Department shall consider the cumulative effect of existing
21 and reasonably anticipated future activities upon wetland
22 resources. The Department shall consider any irreversible and
23 irretrievable commitment of resources that will result from
24 the proposed activity, and the relationship between
25 short-term uses of the environment and the maintenance and
26 enhancement of long-term productivity. The Department shall
27 also consider any proposed impact reduction and compensation
28 measures only after determining that there are no practicable
29 alternatives to the proposed activity and that the measures
30 are consistent with this Act.

31 Section 40. General permits.

32 (a) In carrying out its functions relating to regulated
33 activities, the Department may, after notice and opportunity

1 for public hearing, issue a general permit on a State,
2 county, or regional basis for any category of regulated
3 activity if the Department determines that the activities in
4 that category are similar in nature, will cause only minimal
5 adverse environmental effects when performed separately, and
6 will have only minimal cumulative adverse effect on the
7 environment. Best management practices may be prescribed for
8 activities regulated by a general permit. Any general permit
9 issued under this subsection shall:

10 (1) be based on the guidelines set forth in this
11 Act; and

12 (2) set forth the requirements and standards that
13 will apply to the activity authorized by the general
14 permit.

15 (b) The Department shall issue a general permit for
16 regulated activities for which a permit has been obtained
17 pursuant to a program that is established under Section
18 5-1062 or 5-1062.1 of the Counties Code and that the
19 Department has determined equals the overall protection of
20 wetland functions provided by the Department.

21 (c) No general permit issued under this subsection shall
22 be valid for a period of more than 5 years after the date of
23 its issuance.

24 (d) A general permit may be revoked or modified by the
25 Department if, after opportunity for public hearing, the
26 Department determines that the activities authorized by the
27 general permit have an adverse impact on the environment or
28 the activities are more appropriately authorized by
29 individual permits.

30 Section 60. Creation, restoration, and compensation;
31 mitigation banks.

32 (a) The Department shall encourage private landowners,
33 local governments, other State agencies, land trusts, and

1 others to restore wetlands in order to achieve the long-term
2 goal of a net gain in wetland resources. The Department shall
3 provide technical assistance to agencies, organizations, and
4 individuals in planning and carrying out restoration
5 projects. The Department shall identify possible restoration
6 sites in cooperation with other organizations. The Department
7 shall adopt guidelines and educational materials for
8 restoration projects and may carry out restoration research
9 and demonstration projects.

10 (b) When a permit applicant proposes wetland
11 restoration, creation, or enhancement to compensate for
12 damage to a wetland, the Department shall consider the risk
13 of failure of the impact reduction and compensation measures
14 and may require that permit applicant to implement
15 compensation measures prior to undertaking the proposed
16 activity.

17 (c) The Department may not accept as an impact reduction
18 or compensation measure any measure that creates or restores,
19 on a pro rata basis, less than 1.5 acres of wetland for every
20 1 acre of wetland disturbed by a regulated activity. In
21 deciding whether the compensation ratio proposed by the
22 project applicant is sufficient to provide no net loss of
23 wetland functions and acreage, the Department shall consider:

- 24 (1) the sensitivity of the wetland type;
- 25 (2) the success of other efforts to restore this
26 wetland type;
- 27 (3) the length of time it will take before a
28 compensation wetland will become fully functioning;
- 29 (4) the degree of difficulty that will be
30 encountered in creating or restoring wetland hydrology in
31 this setting;
- 32 (5) the adequacy of the overall project design;
- 33 (6) the threats, if any, posed to the compensation
34 wetland by pollution or other activities;

1 (7) the adequacy of proposed protection and
2 management measures for the proposed compensation
3 wetland;

4 (8) the extent to which monitoring and mid-course
5 correction capabilities are proposed;

6 (9) the extent to which bonds or other assurances
7 are provided to insure long-term success; and

8 (10) any other factors the Department determines to
9 be relevant.

10 (d) The Department may use the compensation ratios
11 established under the Illinois Interagency Wetland Policy Act
12 of 1989 and its implementing regulations and guidelines to
13 establish minimum compensation ratios under this Act. Ratios
14 shall be higher for compensation activities performed outside
15 the immediate sub-watershed where the regulated activity will
16 occur. Compensatory activities shall normally occur in the
17 same county as that of the wetland to be affected by the
18 permitted activity.

19 (e) The Department may also authorize permit applicants,
20 in appropriate circumstances, to compensate for loss of
21 wetland functions by utilizing wetland mitigation banks. The
22 Department may authorize a permit applicant to use a bank if
23 there is no practicable onsite alternatives and using the
24 bank will provide a net benefit in wetland functions and
25 acreage. The Department may permit some combination of onsite
26 impact reduction, compensation measures, and offsite
27 mitigation banks.

28 Section 70. Exemptions.

29 (a) Except as provided in subsection (b) of this
30 Section, the following activities are not prohibited by or
31 otherwise subject to regulation under this Act:

32 (1) normal farming, silviculture, or ranching
33 activities such as plowing, seeding, cultivating, minor

1 drainage, harvesting for the production of food, fiber,
2 and forest products, and upland soil and water
3 conservation practices;

4 (2) maintenance, including emergency reconstruction
5 of recently damaged parts, of currently serviceable
6 structures such as dikes, dams, levees, groins, riprap,
7 breakwaters, causeways, bridge abutments or approaches,
8 and transportation structures;

9 (3) construction or maintenance of farm or stock
10 ponds or irrigation ditches, or the maintenance, but not
11 construction of drainage ditches;

12 (4) construction of temporary sedimentation basins
13 on a construction site that does not include any
14 regulated activities within or affecting a wetland; and

15 (5) construction or maintenance of farm roads,
16 forest roads, or temporary roads for moving mining
17 equipment, where the roads are constructed and maintained
18 in accordance with best management practices to assure
19 that flow and circulation patterns and chemical and
20 biological characteristics of wetlands are not impaired,
21 that the reach of wetlands is not reduced, and that any
22 adverse effect on the aquatic environment will be
23 otherwise minimized.

24 (b) Any regulated activity having as its purpose
25 bringing a wetland into a use to which it was not previously
26 subjected, where the flow or circulation of waters may be
27 impaired, or where the reach of the wetlands shall be
28 reduced, shall be required to have a permit.

29 (c) Any regulated activity for which a permit has been
30 obtained pursuant to Section 404 of the Clean Water Act or
31 pursuant to the Interagency Wetland Policy Act of 1989 is not
32 prohibited by or otherwise subject to regulation under this
33 Act.

1 Section 80. Administrative appeals. Any permit
2 applicant who has been denied a permit in whole or in part,
3 and any person who participated in the permit proceeding and
4 who is aggrieved by a decision of the Department to grant a
5 permit in whole or in part, may appeal the decision to the
6 Director of the Department within 30 days of the permit grant
7 or denial.

8 Section 85. Judicial appeals. A person aggrieved by a
9 decision made pursuant to this Act, including a decision of
10 the Director or the Department, may, after exhausting the
11 available administrative appeals, seek judicial review of the
12 decision pursuant to the Administrative Review Act.

13 Section 90. Penalties; enforcement.

14 (a) A person who violates this Act or the rules
15 promulgated under this Act or causes a violation by his or
16 her employee or agent shall be liable for a civil penalty not
17 to exceed \$50,000 for the original violation and an
18 additional civil penalty not to exceed \$10,000 for each day
19 during which any loss of wetland functions caused by the
20 violation continues. The penalty shall be recovered in an
21 action brought by the Attorney General or the State's
22 Attorney in the circuit court. In determining the appropriate
23 civil penalty to be imposed, the circuit court may consider
24 any matters of record concerning mitigating or aggravating
25 factors for determining the penalty, including but not
26 limited to the following:

- 27 (1) the duration and gravity of the violation;
- 28 (2) the presence or absence of due diligence on the
29 part of the violator in attempting to comply with the
30 requirements of this Act and the rules promulgated under
31 this Act or to secure relief as provided by this Act;
- 32 (3) any economic benefits received by the violator

1 from the violation of this Act;

2 (4) the amount of monetary penalty that will serve
3 to deter further violations by the violator and to
4 otherwise aid in enhancing voluntary compliance with this
5 Act by the violator and other persons similarly subject
6 to this Act; and

7 (5) the number, proximity in time, and gravity of
8 previously adjudicated violations of this Act by the
9 violator.

10 (b) The Department may terminate a permit if the holder
11 violates any condition of the permit, obtains a permit by
12 misrepresentation, or fails to disclose relevant facts.

13 (c) The Attorney General, or the State's Attorney of the
14 county where the affected wetland is located, may, upon his
15 or her own motion or upon request of the Department,
16 institute a civil action in circuit court for an injunction
17 or other appropriate legal action to restrain a violation of
18 this Act or of any rule adopted under this Act. In the
19 proceeding the court shall determine whether a violation has
20 been committed or is likely to occur, and shall enter any
21 order it considers necessary to remove the effects of the
22 violation and to prevent the violation from occurring,
23 continuing, or being renewed in the future. An order may
24 include a requirement that the violator restore the affected
25 wetland area, including a provision that, if the violator
26 does not comply by restoring the wetland within a reasonable
27 time, the Department may restore the wetland to its condition
28 prior to the violation and the violator shall be liable to
29 the Department for the cost of restoration.

30 (d) Any penalty assessed pursuant to this Act, including
31 costs of wetland restoration and any restoration
32 requirements, shall be recorded by the clerk of the court as
33 a lien against the land and shall not be removed until the
34 penalty is paid or the restoration is completed.

1 (e) All costs, fees, and expenses in connection with an
2 enforcement or restoration action shall be assessed as
3 damages against the violator.

4 (f) All penalties collected by the Department under this
5 Section shall be deposited into the Wetlands Protection Fund.

6 (g) Enforcement actions under this Section may be
7 concurrent or separate.

8 Section 100. Wetland Protection Fund. All fees collected
9 by the Department pursuant to this Act shall be deposited
10 into the Wetlands Protection Fund, which is hereby created as
11 a special fund in the State Treasury. In addition to any
12 moneys appropriated from the General Revenue Fund, the
13 Illinois General Assembly shall appropriate moneys in the
14 Wetlands Protection Fund to the Department and the Agency in
15 amounts deemed necessary to implement this Act.

16 Section 110. Preemption. Nothing in this Act shall be
17 construed as a limitation or preemption of any statutory or
18 regulatory authority arising under the Environmental
19 Protection Act or Section 5-1062 or 5-1062.1 of the Counties
20 Code, or of any home rule power.

21 Section 300. The State Finance Act is amended by adding
22 Section 5.570 as follows:

23 (30 ILCS 105/5.570 new)

24 Sec. 5.570. The Wetlands Protection Fund.

25 Section 999. Effective date. This Act takes effect upon
26 becoming law."