

1 AMENDMENT TO SENATE BILL 75

2 AMENDMENT NO. _____. Amend Senate Bill 75, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 5. The State Finance Act is amended by adding
6 Section 5.545 as follows:

7 (30 ILCS 105/5.545 new)

8 Sec. 5.545 The Brownfields Site Restoration Program
9 Fund. Subsections (b) and (c) of Section 5 of this Act do
10 not apply to this Fund.

11 Section 10. The Environmental Protection Act is amended
12 by changing Sections 58.3 and 58.13 and by adding Section
13 58.18 as follows:

14 (415 ILCS 5/58.3)

15 Sec. 58.3. Site Investigation and Remedial Activities
16 Program; Brownfields Redevelopment Fund.

17 (a) The General Assembly hereby establishes by this
18 Title a Site Investigation and Remedial Activities Program
19 for sites subject to this Title. This program shall be
20 administered by the Illinois Environmental Protection Agency

1 under this Title XVII and rules adopted by the Illinois
2 Pollution Control Board.

3 (b) (1) The General Assembly hereby creates within the
4 State Treasury a special fund to be known as the
5 Brownfields Redevelopment Fund, consisting of 2 programs
6 to be known as the "Municipal Brownfields Redevelopment
7 Grant Program" and the "Brownfields Redevelopment Loan
8 Program", which shall be used and administered by the
9 Agency as provided in Sections 58.13 and 58.15 of this
10 Act and the rules adopted under those Sections. The
11 Brownfields Redevelopment Fund ("Fund") shall contain
12 moneys transferred from the Response Contractors
13 Indemnification Fund and other moneys made available for
14 deposit into the Fund.

15 (2) The State Treasurer, ex officio, shall be the
16 custodian of the Fund, and the Comptroller shall direct
17 payments from the Fund upon vouchers properly certified
18 by the Agency. The Treasurer shall credit to the Fund
19 interest earned on moneys contained in the Fund. The
20 Agency shall have the authority to accept, receive, and
21 administer on behalf of the State any grants, gifts,
22 loans, reimbursements or payments for services, or other
23 moneys made available to the State from any source for
24 purposes of the Fund. Those moneys shall be deposited
25 into the Fund, unless otherwise required by the
26 Environmental Protection Act or by federal law.

27 (3) Pursuant to appropriation, all moneys in the
28 Fund shall be used by the Agency for the purposes set
29 forth in subdivision (b)(4) of this Section and Sections
30 58.13 and 58.15 of this Act and to cover the Agency's
31 costs of program development and administration under
32 those Sections.

33 (4) The Agency shall have the power to enter into
34 intergovernmental agreements with the federal government

1 or the State, or any instrumentality thereof, for
2 purposes of capitalizing the Brownfields Redevelopment
3 Fund. Moneys on deposit in the Brownfields Redevelopment
4 Fund may be used for the creation of reserve funds or
5 pledged funds that secure the obligations of repayment of
6 loans made pursuant to Section 58.15 of this Act. For
7 the purpose of obtaining capital for deposit into the
8 Brownfields Redevelopment Fund, the Agency may also enter
9 into agreements with financial institutions and other
10 persons for the purpose of selling loans and developing a
11 secondary market for such loans. The Agency shall have
12 the power to create and establish such reserve funds and
13 accounts as may be necessary or desirable to accomplish
14 its purposes under this subsection and to allocate its
15 available moneys into such funds and accounts.
16 Investment earnings on moneys held in the Brownfields
17 Redevelopment Fund, including any reserve fund or pledged
18 fund, shall be deposited into the Brownfields
19 Redevelopment Fund.

20 (Source: P.A. 90-123, eff. 7-21-97; 91-36, eff. 6-15-99.)

21 (415 ILCS 5/58.13)

22 Sec. 58.13. Municipal Brownfields Redevelopment Grant
23 Program.

24 (a)(1) The Agency shall establish and administer a
25 program of grants to be known as the Municipal
26 Brownfields Redevelopment Grant Program to provide
27 municipalities in Illinois with financial assistance to
28 be used for coordination of activities related to
29 brownfields redevelopment, including but not limited to
30 identification of brownfields sites, site investigation
31 and determination of remediation objectives and related
32 plans and reports, and development of remedial action
33 plans, but not including the implementation of remedial

1 action plans and remedial action completion reports. The
2 plans and reports shall be developed in accordance with
3 Title XVII of this Act.

4 (2) Grants shall be awarded on a competitive basis
5 subject to availability of funding. Criteria for
6 awarding grants shall include, but shall not be limited
7 to the following:

- 8 (A) problem statement and needs assessment;
- 9 (B) community-based planning and involvement;
- 10 (C) implementation planning; and
- 11 (D) long-term benefits and sustainability.

12 (3) The Agency may give weight to geographic
13 location to enhance geographic distribution of grants
14 across this State.

15 (4) Grants shall be limited to a maximum of
16 \$240,000 ~~\$120,000~~ and no municipality shall receive more
17 than one grant under this Section.

18 (5) Grant amounts shall not exceed 70% of the
19 project amount, with the remainder to be provided by the
20 municipality as local matching funds.

21 (b) The Agency shall have the authority to enter into
22 any contracts or agreements that may be necessary to carry
23 out its duties or responsibilities under this Section. The
24 Agency shall have the authority to adopt rules setting forth
25 procedures and criteria for administering the Municipal
26 Brownfields Redevelopment Grant Program. The rules adopted
27 by the Agency may include but shall not be limited to the
28 following:

- 29 (1) purposes for which grants are available;
- 30 (2) application periods and content of
31 applications;
- 32 (3) procedures and criteria for Agency review of
33 grant applications, grant approvals and denials, and
34 grantee acceptance;

- 1 (4) grant payment schedules;
- 2 (5) grantee responsibilities for work schedules,
- 3 work plans, reports, and record keeping;
- 4 (6) evaluation of grantee performance, including
- 5 but not limited to auditing and access to sites and
- 6 records;
- 7 (7) requirements applicable to contracting and
- 8 subcontracting by the grantee;
- 9 (8) penalties for noncompliance with grant
- 10 requirements and conditions, including stop-work orders,
- 11 termination of grants, and recovery of grant funds;
- 12 (9) indemnification of this State and the Agency by
- 13 the grantee; and
- 14 (10) manner of compliance with the Local Government
- 15 Professional Services Selection Act.

16 (Source: P.A. 90-123, eff. 7-21-97.)

17 (415 ILCS 5/58.18 new)

18 Sec. 58.18. Brownfields Site Restoration Program.

19 (a) (1) The Agency, with the assistance of the
20 Department of Commerce and Community Affairs, must
21 establish and administer a program for the payment of
22 remediation costs to be known as the Brownfields Site
23 Restoration Program. The Agency, subject to
24 appropriation, through the Program, shall provide
25 Remediation Applicants with financial assistance for the
26 investigation and remediation of abandoned or
27 underutilized properties. The investigation and
28 remediation shall be performed in accordance with this
29 Title XVII of this Act.

30 (2) For each State fiscal year in which funds are
31 made available to the Agency for payment under this
32 Section, the Agency must allocate 20% of the funds to be
33 available to counties with populations over 2,000,000.

1 The remaining funds must be made available to all other
2 counties in the State.

3 (3) The Agency must not approve payment in excess
4 of \$750,000 to a Remediation Applicant for remediation
5 costs incurred at a remediation site. Eligibility must be
6 determined based on a minimum capital investment in the
7 redevelopment of the site, and payment amounts must not
8 exceed the net economic benefit to the State of the
9 remediation project. In addition to these limitations,
10 the total payment to be made to an applicant must not
11 exceed an amount equal to 20% of the capital investment
12 at the site.

13 (4) Only those remediation projects for which a No
14 Further Remediation Letter is issued by the Agency after
15 December 31, 2001 are eligible to participate in the
16 Brownfields Site Restoration Program. The program does
17 not apply to any sites that have received a No Further
18 Remediation Letter prior to December 31, 2001 or for
19 costs incurred prior to the Department of Commerce and
20 Community Affairs approving a site eligible for the
21 Brownfields Site Restoration Program.

22 (b) Prior to applying to the Agency for payment, a
23 Remediation Applicant must first submit to the Department of
24 Commerce and Community Affairs an application for review of
25 eligibility. The Department must review the eligibility
26 application to determine whether the Remediation Applicant is
27 eligible for the payment. The application must be on forms
28 prescribed and provided by the Department of Commerce and
29 Community Affairs. At a minimum, the application must
30 include the following:

31 (1) Information identifying the Remediation
32 Applicant and the site for which the payment is being
33 sought and the date of acceptance into the Site
34 Remediation Program.

1 (2) Information demonstrating that the site for
2 which the payment is being is sought is abandoned or
3 underutilized property. "Abandoned property" means real
4 property previously used for, or that has the potential
5 to be used for, commercial or industrial purposes that
6 reverted to the ownership of the State, a county or
7 municipal government, or an agency thereof, through
8 donation, purchase, tax delinquency, foreclosure,
9 default, or settlement, including conveyance by deed in
10 lieu of foreclosure; or privately owned property that has
11 been vacant for a period of not less than 3 years from
12 the time an application is made to the Department of
13 Commerce and Community Affairs. "Underutilized property"
14 means real property of which less than 35% of the
15 commercially usable space of the property and
16 improvements thereon are used for their most commercially
17 profitable and economically productive uses.

18 (3) Information demonstrating that remediation of
19 the site for which the payment is being sought will
20 result in a net economic benefit to the State of
21 Illinois. The "net economic benefit" must be determined
22 based on factors including, but not limited to, the
23 capital investment, the number of jobs created, the
24 number of jobs retained if it is demonstrated the jobs
25 would otherwise be lost, capital improvements, the number
26 of construction-related jobs, increased sales, material
27 purchases, other increases in service and operational
28 expenditures, and other factors established by the
29 Department of Commerce and Community Affairs. Priority
30 must be given to sites located in areas with high levels
31 of poverty, where the unemployment rate exceeds the State
32 average, where an enterprise zone exists, or where the
33 area is otherwise economically depressed as determined by
34 the Department of Commerce and Community Affairs.

1 (4) An application fee in the amount set forth in
2 subsection (c) for each site for which review of an
3 application is being sought.

4 (c) The fee for eligibility reviews conducted by the
5 Department of Commerce and Community Affairs under this
6 Section is \$1,000 for each site reviewed. The application
7 fee must be made payable to the State of Illinois for deposit
8 into the Brownfields Site Restoration Program Fund.

9 (d) Within 60 days after receipt by the Department of
10 Commerce and Community Affairs of an application meeting the
11 requirements of subsection (b), the Department of Commerce
12 and Community Affairs must issue a letter to the applicant
13 approving or disapproving the application. If the
14 application is approved, the Department of Commerce and
15 Community Affairs' letter must also include its determination
16 of the "net economic benefit" of the remediation project and
17 the maximum amount of the payment to be made available to the
18 applicant for remediation costs. The payment by the Agency
19 under this Section must not exceed the "net economic benefit"
20 of the remediation project, as determined by the Department
21 of Commerce and Community Affairs.

22 (e) An application for a review of remediation costs
23 must not be submitted to the Agency unless the Department of
24 Commerce and Community Affairs has determined the Remediation
25 Applicant is eligible under subsection (d). If the
26 Department of Commerce and Community Affairs has determined
27 that a Remediation Applicant is eligible under subsection
28 (d), the Remediation Applicant may submit an application for
29 payment to the Agency under this Section. Except as provided
30 in subsection (f), an application for review of remediation
31 costs must not be submitted until a No Further Remediation
32 Letter has been issued by the Agency and recorded in the
33 chain of title for the site in accordance with Section 58.10.
34 The Agency must review the application to determine whether

1 the costs submitted are remediation costs and whether the
2 costs incurred are reasonable. The application must be on
3 forms prescribed and provided by the Agency. At a minimum,
4 the application must include the following:

5 (1) Information identifying the Remediation
6 Applicant and the site for which the payment is being
7 sought and the date of acceptance of the site into the
8 Site Remediation Program.

9 (2) A copy of the No Further Remediation Letter
10 with official verification that the letter has been
11 recorded in the chain of title for the site and a
12 demonstration that the site for which the application is
13 submitted is the same site as the one for which the No
14 Further Remediation Letter is issued.

15 (3) A demonstration that the release of the
16 regulated substances of concern for which the No Further
17 Remediation Letter was issued was not caused or
18 contributed to in any material respect by the Remediation
19 Applicant. The Agency must make determinations as to
20 reimbursement availability consistent with rules adopted
21 by the Pollution Control Board for the administration and
22 enforcement of Section 58.9 of this Act.

23 (4) A copy of the Department of Commerce and
24 Community Affairs' letter approving eligibility,
25 including the net economic benefit of the remediation
26 project.

27 (5) An itemization and documentation, including
28 receipts, of the remediation costs incurred.

29 (6) A demonstration that the costs incurred are
30 remediation costs as defined in this Act and rules
31 adopted under this Act.

32 (7) A demonstration that the costs submitted for
33 review were incurred by the Remediation Applicant who
34 received the No Further Remediation Letter.

1 (8) An application fee in the amount set forth in
2 subsection (j) for each site for which review of
3 remediation costs is requested.

4 (9) Any other information deemed appropriate by the
5 Agency.

6 (f) An application for review of remediation costs may
7 be submitted to the Agency prior to the issuance of a No
8 Further Remediation Letter if the Remediation Applicant has
9 a Remedial Action Plan approved by the Agency under the terms
10 of which the Remediation Applicant will remediate groundwater
11 for more than one year. The Agency must review the
12 application to determine whether the costs submitted are
13 remediation costs and whether the costs incurred are
14 reasonable. The application must be on forms prescribed and
15 provided by the Agency. At a minimum, the application must
16 include the following:

17 (1) Information identifying the Remediation
18 Applicant and the site for which the payment is being
19 sought and the date of acceptance of the site into the
20 Site Remediation Program.

21 (2) A copy of the Agency letter approving the
22 Remedial Action Plan.

23 (3) A demonstration that the release of the
24 regulated substances of concern for which the Remedial
25 Action Plan was approved was not caused or contributed to
26 in any material respect by the Remediation Applicant.
27 The Agency must make determinations as to reimbursement
28 availability consistent with rules adopted by the
29 Pollution Control Board for the administration and
30 enforcement of Section 58.9 of this Act.

31 (4) A copy of the Department of Commerce and
32 Community Affairs' letter approving eligibility,
33 including the net economic benefit of the remediation
34 project.

1 (5) An itemization and documentation, including
2 receipts, of the remediation costs incurred.

3 (6) A demonstration that the costs incurred are
4 remediation costs as defined in this Act and rules
5 adopted under this Act.

6 (7) A demonstration that the costs submitted for
7 review were incurred by the Remediation Applicant who
8 received approval of the Remediation Action Plan.

9 (8) An application fee in the amount set forth in
10 subsection (j) for each site for which review of
11 remediation costs is requested.

12 (9) Any other information deemed appropriate by the
13 Agency.

14 (g) For a Remediation Applicant seeking a payment under
15 subsection (f), until the Agency issues a No Further
16 Remediation Letter for the site, no more than 75% of the
17 allowed payment may be claimed by the Remediation Applicant.
18 The remaining 25% may be claimed following the issuance by
19 the Agency of a No Further Remediation Letter for the site.
20 For a Remediation Applicant seeking a payment under
21 subsection (e), until the Agency issues a No Further
22 Remediation Letter for the site, no payment may be claimed by
23 the Remediation Applicant.

24 (h) (1) Within 60 days after receipt by the Agency
25 of an application meeting the requirements of subsection
26 (e) or (f), the Agency must issue a letter to the
27 applicant approving, disapproving, or modifying the
28 remediation costs submitted in the application. If an
29 application is disapproved or approved with modification
30 of remediation costs, then the Agency's letter must set
31 forth the reasons for the disapproval or modification.

32 (2) If a preliminary review of a budget plan has
33 been obtained under subsection (i), the Remediation
34 Applicant may submit, with the application and supporting

1 documentation under subsections (e) or (f), a copy of the
2 Agency's final determination accompanied by a
3 certification that the actual remediation costs incurred
4 for the development and implementation of the Remedial
5 Action Plan are equal to or less than the costs approved
6 in the Agency's final determination on the budget plan.
7 The certification must be signed by the Remediation
8 Applicant and notarized. Based on that submission, the
9 Agency is not required to conduct further review of the
10 costs incurred for development and implementation of the
11 Remedial Action Plan and may approve costs as submitted.

12 (3) Within 35 days after receipt of an Agency
13 letter disapproving or modifying an application for
14 approval of remediation costs, the Remediation Applicant
15 may appeal the Agency's decision to the Board in the
16 manner provided for the review of permits in Section 40
17 of this Act.

18 (i) (1) A Remediation Applicant may obtain a
19 preliminary review of estimated remediation costs for the
20 development and implementation of the Remedial Action
21 Plan by submitting a budget plan along with the Remedial
22 Action Plan. The budget plan must be set forth on forms
23 prescribed and provided by the Agency and must include,
24 but is not limited to, line item estimates of the costs
25 associated with each line item (such as personnel,
26 equipment, and materials) that the Remediation Applicant
27 anticipates will be incurred for the development and
28 implementation of the Remedial Action Plan. The Agency
29 must review the budget plan along with the Remedial
30 Action Plan to determine whether the estimated costs
31 submitted are remediation costs and whether the costs
32 estimated for the activities are reasonable.

33 (2) If the Remedial Action Plan is amended by the
34 Remediation Applicant or as a result of Agency action,

1 the corresponding budget plan must be revised accordingly
2 and resubmitted for Agency review.

3 (3) The budget plan must be accompanied by the
4 applicable fee as set forth in subsection (j).

5 (4) Submittal of a budget plan must be deemed an
6 automatic 60-day waiver of the Remedial Action Plan
7 review deadlines set forth in this Section and rules
8 adopted under this Section.

9 (5) Within the applicable period of review, the
10 Agency must issue a letter to the Remediation Applicant
11 approving, disapproving, or modifying the estimated
12 remediation costs submitted in the budget plan. If a
13 budget plan is disapproved or approved with modification
14 of estimated remediation costs, the Agency's letter must
15 set forth the reasons for the disapproval or
16 modification.

17 (6) Within 35 days after receipt of an Agency
18 letter disapproving or modifying a budget plan, the
19 Remediation Applicant may appeal the Agency's decision to
20 the Board in the manner provided for the review of
21 permits in Section 40 of this Act.

22 (j) The fees for reviews conducted by the Agency under
23 this Section are in addition to any other fees or payments
24 for Agency services rendered pursuant to the Site Remediation
25 Program and are as follows:

26 (1) The fee for an application for review of
27 remediation costs is \$1,000 for each site reviewed.

28 (2) The fee for the review of the budget plan
29 submitted under subsection (i) is \$500 for each site
30 reviewed.

31 The application fee must be made payable to the State of
32 Illinois, for deposit into the Brownfields Site Restoration
33 Program Fund.

34 (k) The Brownfields Site Restoration Program Fund.

1 (1) The Brownfields Site Restoration Program Fund
2 is created as a special fund in the State treasury to be
3 used by the Agency, subject to appropriation, exclusively
4 for the purposes of this Section, including payment for
5 the costs of administering this Act.

6 (2) The Fund consists of collected fees,
7 appropriations from the General Assembly, and gifts and
8 grants to the Fund.

9 (3) The State Treasurer must invest the money in
10 the Fund not currently needed to meet the obligations of
11 the Fund in the same manner as other public funds may be
12 invested. All interest earned on moneys in the Fund must
13 be deposited into the Fund.

14 (4) The money in the Fund at the end of a State
15 fiscal year must remain in the Fund to be used
16 exclusively for the purposes of this Section.
17 Expenditures from the Fund are subject to appropriation
18 by the General Assembly.

19 (1) The Department and the Agency are authorized enter
20 into any contracts or agreements that may be necessary to
21 carry out their duties and responsibilities under this
22 Section.

23 (m) Within 6 months after the effective date of this
24 amendatory Act of 2001, the Department of Commerce and
25 Community Affairs and the Agency must propose rules
26 prescribing procedures and standards for the administration
27 of this Section. Within 6 months after receipt of the
28 proposed rules, the Board shall adopt on second notice,
29 pursuant to Sections 27 and 28 of this Act and the Illinois
30 Administrative Procedures Act, rules that are consistent with
31 this Section. Prior to the effective date of rules adopted
32 under this Section, the Department of Commerce and Community
33 Affairs and the Agency may conduct reviews of applications
34 under this Section and the Agency is further authorized to

1 distribute guidance documents on costs that are eligible or
2 ineligible as remediation costs.

3 Section 15. The Response Action Contractor
4 Indemnification Act is amended by changing Section 5 as
5 follows:

6 (415 ILCS 100/5) (from Ch. 111 1/2, par. 7205)

7 Sec. 5. Response Contractors Indemnification Fund.

8 (a) There is hereby created the Response Contractors
9 Indemnification Fund. The State Treasurer, ex officio, shall
10 be custodian of the Fund, and the Comptroller shall direct
11 payments from the Fund upon vouchers properly certified by
12 the Attorney General in accordance with Section 4. The
13 Treasurer shall credit interest on the Fund to the Fund.

14 (b) Every State response action contract shall provide
15 that 5% of each payment to be made by the State under the
16 contract shall be paid by the State directly into the
17 Response Contractors Indemnification Fund rather than to the
18 contractor, except that when there is more than \$2,000,000
19 ~~\$4,000,000~~ in the Fund at the beginning of a State fiscal
20 year, State response action contracts during that fiscal year
21 need not provide that 5% of each payment made under the
22 contract be paid into the Fund. When only a portion of a
23 contract relates to a remedial or response action, or to the
24 identification, handling, storage, treatment or disposal of a
25 pollutant, the contract shall provide that only that portion
26 is subject to this subsection.

27 (c) Within 30 days after the effective date of this
28 amendatory Act of 1997, the Comptroller shall order
29 transferred and the Treasurer shall transfer \$1,200,000 from
30 the Response Contractors Indemnification Fund to the
31 Brownfields Redevelopment Fund. The Comptroller shall order
32 transferred and the Treasurer shall transfer \$1,200,000 from

1 the Response Contractors Indemnification Fund to the
2 Brownfields Redevelopment Fund on the first day of fiscal
3 years 1999, 2000, 2001, and 2002, 2003, 2004, and 2005.

4 (d) Within 30 days after the effective date of this
5 amendatory Act of the 91st General Assembly, the Comptroller
6 shall order transferred and the Treasurer shall transfer
7 \$2,000,000 from the Response Contractors Indemnification Fund
8 to the Asbestos Abatement Fund.

9 (Source: P.A. 90-123, eff. 7-21-97; 91-704, eff. 7-1-00.)".