

HB2842



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB2842

by Rep. Robert Rita

SYNOPSIS AS INTRODUCED:

415 ILCS 5/39.2

from Ch. 111 1/2, par. 1039.2

Amends the Environmental Protection Act. Provides that applicants for local siting approval shall submit evidence to demonstrate compliance. Provides that applicants for local siting approval shall present testimony subject to cross-examination at specified public hearings. Effective immediately.

LRB100 03633 MJP 13638 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 39.2 as follows:

6 (415 ILCS 5/39.2) (from Ch. 111 1/2, par. 1039.2)

7 Sec. 39.2. Local siting review.

8 (a) The county board of the county or the governing body of
9 the municipality, as determined by paragraph (c) of Section 39
10 of this Act, shall approve or disapprove the request for local
11 siting approval for each pollution control facility which is
12 subject to such review. An applicant for local siting approval
13 shall submit sufficient details describing the proposed
14 facility and evidence to demonstrate compliance, and local
15 siting approval shall be granted only if the proposed facility
16 meets the following criteria:

17 (i) the facility is necessary to accommodate the waste
18 needs of the area it is intended to serve;

19 (ii) the facility is so designed, located and proposed
20 to be operated that the public health, safety and welfare
21 will be protected;

22 (iii) the facility is located so as to minimize
23 incompatibility with the character of the surrounding area

1 and to minimize the effect on the value of the surrounding
2 property;

3 (iv) (A) for a facility other than a sanitary landfill
4 or waste disposal site, the facility is located outside the
5 boundary of the 100 year flood plain or the site is
6 flood-proofed; (B) for a facility that is a sanitary
7 landfill or waste disposal site, the facility is located
8 outside the boundary of the 100-year floodplain, or if the
9 facility is a facility described in subsection (b) (3) of
10 Section 22.19a, the site is flood-proofed;

11 (v) the plan of operations for the facility is designed
12 to minimize the danger to the surrounding area from fire,
13 spills, or other operational accidents;

14 (vi) the traffic patterns to or from the facility are
15 so designed as to minimize the impact on existing traffic
16 flows;

17 (vii) if the facility will be treating, storing or
18 disposing of hazardous waste, an emergency response plan
19 exists for the facility which includes notification,
20 containment and evacuation procedures to be used in case of
21 an accidental release;

22 (viii) if the facility is to be located in a county
23 where the county board has adopted a solid waste management
24 plan consistent with the planning requirements of the Local
25 Solid Waste Disposal Act or the Solid Waste Planning and
26 Recycling Act, the facility is consistent with that plan;

1 for purposes of this criterion (viii), the "solid waste
2 management plan" means the plan that is in effect as of the
3 date the application for siting approval is filed; and

4 (ix) if the facility will be located within a regulated
5 recharge area, any applicable requirements specified by
6 the Board for such areas have been met.

7 The county board or the governing body of the municipality
8 may also consider as evidence the previous operating experience
9 and past record of convictions or admissions of violations of
10 the applicant (and any subsidiary or parent corporation) in the
11 field of solid waste management when considering criteria (ii)
12 and (v) under this Section.

13 If the facility is subject to the location restrictions in
14 Section 22.14 of this Act, compliance with that Section shall
15 be determined as of the date the application for siting
16 approval is filed.

17 (b) No later than 14 days before the date on which the
18 county board or governing body of the municipality receives a
19 request for site approval, the applicant shall cause written
20 notice of such request to be served either in person or by
21 registered mail, return receipt requested, on the owners of all
22 property within the subject area not solely owned by the
23 applicant, and on the owners of all property within 250 feet in
24 each direction of the lot line of the subject property, said
25 owners being such persons or entities which appear from the
26 authentic tax records of the County in which such facility is

1 to be located; provided, that the number of all feet occupied
2 by all public roads, streets, alleys and other public ways
3 shall be excluded in computing the 250 feet requirement;
4 provided further, that in no event shall this requirement
5 exceed 400 feet, including public streets, alleys and other
6 public ways.

7 Such written notice shall also be served upon members of
8 the General Assembly from the legislative district in which the
9 proposed facility is located and shall be published in a
10 newspaper of general circulation published in the county in
11 which the site is located.

12 Such notice shall state the name and address of the
13 applicant, the location of the proposed site, the nature and
14 size of the development, the nature of the activity proposed,
15 the probable life of the proposed activity, the date when the
16 request for site approval will be submitted, and a description
17 of the right of persons to comment on such request as hereafter
18 provided.

19 (c) An applicant shall file a copy of its request with the
20 county board of the county or the governing body of the
21 municipality in which the proposed site is located. The request
22 shall include (i) the substance of the applicant's proposal and
23 (ii) all documents, if any, submitted as of that date to the
24 Agency pertaining to the proposed facility, except trade
25 secrets as determined under Section 7.1 of this Act. All such
26 documents or other materials on file with the county board or

1 governing body of the municipality shall be made available for
2 public inspection at the office of the county board or the
3 governing body of the municipality and may be copied upon
4 payment of the actual cost of reproduction.

5 Any person may file written comment with the county board
6 or governing body of the municipality concerning the
7 appropriateness of the proposed site for its intended purpose.
8 The county board or governing body of the municipality shall
9 consider any comment received or postmarked not later than 30
10 days after the date of the last public hearing.

11 (d) At least one public hearing, at which an applicant
12 shall present testimony subject to cross-examination, is to be
13 held by the county board or governing body of the municipality
14 no sooner than 90 days but no later than 120 days after the
15 date on which it received the request for site approval. No
16 later than 14 days prior to such hearing, notice shall be
17 published in a newspaper of general circulation published in
18 the county of the proposed site, and delivered by certified
19 mail to all members of the General Assembly from the district
20 in which the proposed site is located, to the governing
21 authority of every municipality contiguous to the proposed site
22 or contiguous to the municipality in which the proposed site is
23 to be located, to the county board of the county where the
24 proposed site is to be located, if the proposed site is located
25 within the boundaries of a municipality, and to the Agency.
26 Members or representatives of the governing authority of a

1 municipality contiguous to the proposed site or contiguous to
2 the municipality in which the proposed site is to be located
3 and, if the proposed site is located in a municipality, members
4 or representatives of the county board of a county in which the
5 proposed site is to be located may appear at and participate in
6 public hearings held pursuant to this Section. The public
7 hearing shall develop a record sufficient to form the basis of
8 appeal of the decision in accordance with Section 40.1 of this
9 Act. The fact that a member of the county board or governing
10 body of the municipality has publicly expressed an opinion on
11 an issue related to a site review proceeding shall not preclude
12 the member from taking part in the proceeding and voting on the
13 issue.

14 (e) Decisions of the county board or governing body of the
15 municipality are to be in writing, specifying the reasons for
16 the decision, such reasons to be in conformance with subsection
17 (a) of this Section. In granting approval for a site the county
18 board or governing body of the municipality may impose such
19 conditions as may be reasonable and necessary to accomplish the
20 purposes of this Section and as are not inconsistent with
21 regulations promulgated by the Board. Such decision shall be
22 available for public inspection at the office of the county
23 board or governing body of the municipality and may be copied
24 upon payment of the actual cost of reproduction. If there is no
25 final action by the county board or governing body of the
26 municipality within 180 days after the date on which it

1 received the request for site approval, the applicant may deem
2 the request approved.

3 At the public hearing, at any time prior to completion by
4 the applicant of the presentation of the applicant's factual
5 evidence, testimony, and an opportunity for cross-examination
6 ~~cross-questioning~~ by the county board or governing body of the
7 municipality and any participants, the applicant may file not
8 more than one amended application upon payment of additional
9 fees pursuant to subsection (k); in which case the time
10 limitation for final action set forth in this subsection (e)
11 shall be extended for an additional period of 90 days.

12 If, prior to making a final local siting decision, a county
13 board or governing body of a municipality has negotiated and
14 entered into a host agreement with the local siting applicant,
15 the terms and conditions of the host agreement, whether written
16 or oral, shall be disclosed and made a part of the hearing
17 record for that local siting proceeding. In the case of an oral
18 agreement, the disclosure shall be made in the form of a
19 written summary jointly prepared and submitted by the county
20 board or governing body of the municipality and the siting
21 applicant and shall describe the terms and conditions of the
22 oral agreement.

23 (e-5) Siting approval obtained pursuant to this Section is
24 transferable and may be transferred to a subsequent owner or
25 operator. In the event that siting approval has been
26 transferred to a subsequent owner or operator, that subsequent

1 owner or operator assumes and takes subject to any and all
2 conditions imposed upon the prior owner or operator by the
3 county board of the county or governing body of the
4 municipality pursuant to subsection (e). However, any such
5 conditions imposed pursuant to this Section may be modified by
6 agreement between the subsequent owner or operator and the
7 appropriate county board or governing body. Further, in the
8 event that siting approval obtained pursuant to this Section
9 has been transferred to a subsequent owner or operator, that
10 subsequent owner or operator assumes all rights and obligations
11 and takes the facility subject to any and all terms and
12 conditions of any existing host agreement between the prior
13 owner or operator and the appropriate county board or governing
14 body.

15 (f) A local siting approval granted under this Section
16 shall expire at the end of 2 calendar years from the date upon
17 which it was granted, unless the local siting approval granted
18 under this Section is for a sanitary landfill operation, in
19 which case the approval shall expire at the end of 3 calendar
20 years from the date upon which it was granted, and unless
21 within that period the applicant has made application to the
22 Agency for a permit to develop the site. In the event that the
23 local siting decision has been appealed, such expiration period
24 shall be deemed to begin on the date upon which the appeal
25 process is concluded.

26 Except as otherwise provided in this subsection, upon the

1 expiration of a development permit under subsection (k) of
2 Section 39, any associated local siting approval granted for
3 the facility under this Section shall also expire.

4 If a first development permit for a municipal waste
5 incineration facility expires under subsection (k) of Section
6 39 after September 30, 1989 due to circumstances beyond the
7 control of the applicant, any associated local siting approval
8 granted for the facility under this Section may be used to
9 fulfill the local siting approval requirement upon application
10 for a second development permit for the same site, provided
11 that the proposal in the new application is materially the
12 same, with respect to the criteria in subsection (a) of this
13 Section, as the proposal that received the original siting
14 approval, and application for the second development permit is
15 made before January 1, 1990.

16 (g) The siting approval procedures, criteria and appeal
17 procedures provided for in this Act for new pollution control
18 facilities shall be the exclusive siting procedures and rules
19 and appeal procedures for facilities subject to such
20 procedures. Local zoning or other local land use requirements
21 shall not be applicable to such siting decisions.

22 (h) Nothing in this Section shall apply to any existing or
23 new pollution control facility located within the corporate
24 limits of a municipality with a population of over 1,000,000.

25 (i) (Blank.)

26 The Board shall adopt regulations establishing the

1 geologic and hydrologic siting criteria necessary to protect
2 usable groundwater resources which are to be followed by the
3 Agency in its review of permit applications for new pollution
4 control facilities. Such regulations, insofar as they apply to
5 new pollution control facilities authorized to store, treat or
6 dispose of any hazardous waste, shall be at least as stringent
7 as the requirements of the Resource Conservation and Recovery
8 Act and any State or federal regulations adopted pursuant
9 thereto.

10 (j) Any new pollution control facility which has never
11 obtained local siting approval under the provisions of this
12 Section shall be required to obtain such approval after a final
13 decision on an appeal of a permit denial.

14 (k) A county board or governing body of a municipality may
15 charge applicants for siting review under this Section a
16 reasonable fee to cover the reasonable and necessary costs
17 incurred by such county or municipality in the siting review
18 process.

19 (l) The governing Authority as determined by subsection (c)
20 of Section 39 of this Act may request the Department of
21 Transportation to perform traffic impact studies of proposed or
22 potential locations for required pollution control facilities.

23 (m) An applicant may not file a request for local siting
24 approval which is substantially the same as a request which was
25 disapproved pursuant to a finding against the applicant under
26 any of criteria (i) through (ix) of subsection (a) of this

1 Section within the preceding 2 years.

2 (n) In any review proceeding of a decision of the county
3 board or governing body of a municipality made pursuant to the
4 local siting review process, the petitioner in the review
5 proceeding shall pay to the county or municipality the cost of
6 preparing and certifying the record of proceedings. Should the
7 petitioner in the review proceeding fail to make payment, the
8 provisions of Section 3-109 of the Code of Civil Procedure
9 shall apply.

10 In the event the petitioner is a citizens' group that
11 participated in the siting proceeding and is so located as to
12 be affected by the proposed facility, such petitioner shall be
13 exempt from paying the costs of preparing and certifying the
14 record.

15 (o) Notwithstanding any other provision of this Section, a
16 transfer station used exclusively for landscape waste, where
17 landscape waste is held no longer than 24 hours from the time
18 it was received, is not subject to the requirements of local
19 siting approval under this Section, but is subject only to
20 local zoning approval.

21 (Source: P.A. 94-591, eff. 8-15-05; 95-288, eff. 8-20-07.)

22 Section 99. Effective date. This Act takes effect upon
23 becoming law.