



Rep. Robert Rita

**Filed: 3/9/2017**

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LRB100 03633 MJP 22836 a

1 AMENDMENT TO HOUSE BILL 2842

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2842 by replacing  
3 everything after the enacting clause with the following:

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:

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

3 (ii) the facility is so designed, located and proposed  
4 to be operated that the public health, safety and welfare  
5 will be protected;

6 (iii) the facility is located so as to minimize  
7 incompatibility with the character of the surrounding area  
8 and to minimize the effect on the value of the surrounding  
9 property;

10 (iv) (A) for a facility other than a sanitary landfill  
11 or waste disposal site, the facility is located outside the  
12 boundary of the 100 year flood plain or the site is  
13 flood-proofed; (B) for a facility that is a sanitary  
14 landfill or waste disposal site, the facility is located  
15 outside the boundary of the 100-year floodplain, or if the  
16 facility is a facility described in subsection (b) (3) of  
17 Section 22.19a, the site is flood-proofed;

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

21 (vi) the traffic patterns to or from the facility are  
22 so designed as to minimize the impact on existing traffic  
23 flows;

24 (vii) if the facility will be treating, storing or  
25 disposing of hazardous waste, an emergency response plan  
26 exists for the facility which includes notification,

1           containment and evacuation procedures to be used in case of  
2           an accidental release;

3           (viii) if the facility is to be located in a county  
4           where the county board has adopted a solid waste management  
5           plan consistent with the planning requirements of the Local  
6           Solid Waste Disposal Act or the Solid Waste Planning and  
7           Recycling Act, the facility is consistent with that plan;  
8           for purposes of this criterion (viii), the "solid waste  
9           management plan" means the plan that is in effect as of the  
10          date the application for siting approval is filed; and

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

14          The county board or the governing body of the municipality  
15          may also consider as evidence the previous operating experience  
16          and past record of convictions or admissions of violations of  
17          the applicant (and any subsidiary or parent corporation) in the  
18          field of solid waste management when considering criteria (ii)  
19          and (v) under this Section.

20          If the facility is subject to the location restrictions in  
21          Section 22.14 of this Act, compliance with that Section shall  
22          be determined as of the date the application for siting  
23          approval is filed.

24          (b) No later than 14 days before the date on which the  
25          county board or governing body of the municipality receives a  
26          request for site approval, the applicant shall cause written

1 notice of such request to be served either in person or by  
2 registered mail, return receipt requested, on the owners of all  
3 property within the subject area not solely owned by the  
4 applicant, and on the owners of all property within 250 feet in  
5 each direction of the lot line of the subject property, said  
6 owners being such persons or entities which appear from the  
7 authentic tax records of the County in which such facility is  
8 to be located; provided, that the number of all feet occupied  
9 by all public roads, streets, alleys and other public ways  
10 shall be excluded in computing the 250 feet requirement;  
11 provided further, that in no event shall this requirement  
12 exceed 400 feet, including public streets, alleys and other  
13 public ways.

14 Such written notice shall also be served upon members of  
15 the General Assembly from the legislative district in which the  
16 proposed facility is located and shall be published in a  
17 newspaper of general circulation published in the county in  
18 which the site is located.

19 Such notice shall state the name and address of the  
20 applicant, the location of the proposed site, the nature and  
21 size of the development, the nature of the activity proposed,  
22 the probable life of the proposed activity, the date when the  
23 request for site approval will be submitted, and a description  
24 of the right of persons to comment on such request as hereafter  
25 provided.

26 (c) An applicant shall file a copy of its request with the

1 county board of the county or the governing body of the  
2 municipality in which the proposed site is located. The request  
3 shall include (i) the substance of the applicant's proposal and  
4 (ii) all documents, if any, submitted as of that date to the  
5 Agency pertaining to the proposed facility, except trade  
6 secrets as determined under Section 7.1 of this Act. All such  
7 documents or other materials on file with the county board or  
8 governing body of the municipality shall be made available for  
9 public inspection at the office of the county board or the  
10 governing body of the municipality and may be copied upon  
11 payment of the actual cost of reproduction.

12 Any person may file written comment with the county board  
13 or governing body of the municipality concerning the  
14 appropriateness of the proposed site for its intended purpose.  
15 The county board or governing body of the municipality shall  
16 consider any comment received or postmarked not later than 30  
17 days after the date of the last public hearing.

18 (d) At least one public hearing, at which an applicant  
19 shall present at least one witness to testify subject to  
20 cross-examination, is to be held by the county board or  
21 governing body of the municipality no sooner than 90 days but  
22 no later than 120 days after the date on which it received the  
23 request for site approval. No later than 14 days prior to such  
24 hearing, notice shall be published in a newspaper of general  
25 circulation published in the county of the proposed site, and  
26 delivered by certified mail to all members of the General

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

22 (e) Decisions of the county board or governing body of the  
23 municipality are to be in writing, confirming a public hearing  
24 was held with testimony from at least one witness presented by  
25 the applicant, specifying the reasons for the decision, such  
26 reasons to be in conformance with subsection (a) of this

1 Section. In granting approval for a site the county board or  
2 governing body of the municipality may impose such conditions  
3 as may be reasonable and necessary to accomplish the purposes  
4 of this Section and as are not inconsistent with regulations  
5 promulgated by the Board. Such decision shall be available for  
6 public inspection at the office of the county board or  
7 governing body of the municipality and may be copied upon  
8 payment of the actual cost of reproduction. If there is no  
9 final action by the county board or governing body of the  
10 municipality within 180 days after the date on which it  
11 received the request for site approval, the applicant may deem  
12 the request approved.

13 At the public hearing, at any time prior to completion by  
14 the applicant of the presentation of the applicant's factual  
15 evidence, testimony, and an opportunity for cross-examination  
16 ~~cross-questioning~~ by the county board or governing body of the  
17 municipality and any participants, the applicant may file not  
18 more than one amended application upon payment of additional  
19 fees pursuant to subsection (k); in which case the time  
20 limitation for final action set forth in this subsection (e)  
21 shall be extended for an additional period of 90 days.

22 If, prior to making a final local siting decision, a county  
23 board or governing body of a municipality has negotiated and  
24 entered into a host agreement with the local siting applicant,  
25 the terms and conditions of the host agreement, whether written  
26 or oral, shall be disclosed and made a part of the hearing

1 record for that local siting proceeding. In the case of an oral  
2 agreement, the disclosure shall be made in the form of a  
3 written summary jointly prepared and submitted by the county  
4 board or governing body of the municipality and the siting  
5 applicant and shall describe the terms and conditions of the  
6 oral agreement.

7 (e-5) Siting approval obtained pursuant to this Section is  
8 transferable and may be transferred to a subsequent owner or  
9 operator. In the event that siting approval has been  
10 transferred to a subsequent owner or operator, that subsequent  
11 owner or operator assumes and takes subject to any and all  
12 conditions imposed upon the prior owner or operator by the  
13 county board of the county or governing body of the  
14 municipality pursuant to subsection (e). However, any such  
15 conditions imposed pursuant to this Section may be modified by  
16 agreement between the subsequent owner or operator and the  
17 appropriate county board or governing body. Further, in the  
18 event that siting approval obtained pursuant to this Section  
19 has been transferred to a subsequent owner or operator, that  
20 subsequent owner or operator assumes all rights and obligations  
21 and takes the facility subject to any and all terms and  
22 conditions of any existing host agreement between the prior  
23 owner or operator and the appropriate county board or governing  
24 body.

25 (f) A local siting approval granted under this Section  
26 shall expire at the end of 2 calendar years from the date upon



1 which it was granted, unless the local siting approval granted  
2 under this Section is for a sanitary landfill operation, in  
3 which case the approval shall expire at the end of 3 calendar  
4 years from the date upon which it was granted, and unless  
5 within that period the applicant has made application to the  
6 Agency for a permit to develop the site. In the event that the  
7 local siting decision has been appealed, such expiration period  
8 shall be deemed to begin on the date upon which the appeal  
9 process is concluded.

10 Except as otherwise provided in this subsection, upon the  
11 expiration of a development permit under subsection (k) of  
12 Section 39, any associated local siting approval granted for  
13 the facility under this Section shall also expire.

14 If a first development permit for a municipal waste  
15 incineration facility expires under subsection (k) of Section  
16 39 after September 30, 1989 due to circumstances beyond the  
17 control of the applicant, any associated local siting approval  
18 granted for the facility under this Section may be used to  
19 fulfill the local siting approval requirement upon application  
20 for a second development permit for the same site, provided  
21 that the proposal in the new application is materially the  
22 same, with respect to the criteria in subsection (a) of this  
23 Section, as the proposal that received the original siting  
24 approval, and application for the second development permit is  
25 made before January 1, 1990.

26 (g) The siting approval procedures, criteria and appeal

1 procedures provided for in this Act for new pollution control  
2 facilities shall be the exclusive siting procedures and rules  
3 and appeal procedures for facilities subject to such  
4 procedures. Local zoning or other local land use requirements  
5 shall not be applicable to such siting decisions.

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

9 (i) (Blank.)

10 The Board shall adopt regulations establishing the  
11 geologic and hydrologic siting criteria necessary to protect  
12 usable groundwater resources which are to be followed by the  
13 Agency in its review of permit applications for new pollution  
14 control facilities. Such regulations, insofar as they apply to  
15 new pollution control facilities authorized to store, treat or  
16 dispose of any hazardous waste, shall be at least as stringent  
17 as the requirements of the Resource Conservation and Recovery  
18 Act and any State or federal regulations adopted pursuant  
19 thereto.

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

24 (k) A county board or governing body of a municipality may  
25 charge applicants for siting review under this Section a  
26 reasonable fee to cover the reasonable and necessary costs

1 incurred by such county or municipality in the siting review  
2 process.

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

7 (m) An applicant may not file a request for local siting  
8 approval which is substantially the same as a request which was  
9 disapproved pursuant to a finding against the applicant under  
10 any of criteria (i) through (ix) of subsection (a) of this  
11 Section within the preceding 2 years.

12 (n) In any review proceeding of a decision of the county  
13 board or governing body of a municipality made pursuant to the  
14 local siting review process, the petitioner in the review  
15 proceeding shall pay to the county or municipality the cost of  
16 preparing and certifying the record of proceedings. Should the  
17 petitioner in the review proceeding fail to make payment, the  
18 provisions of Section 3-109 of the Code of Civil Procedure  
19 shall apply.

20 In the event the petitioner is a citizens' group that  
21 participated in the siting proceeding and is so located as to  
22 be affected by the proposed facility, such petitioner shall be  
23 exempt from paying the costs of preparing and certifying the  
24 record.

25 (o) Notwithstanding any other provision of this Section, a  
26 transfer station used exclusively for landscape waste, where

1 landscape waste is held no longer than 24 hours from the time  
2 it was received, is not subject to the requirements of local  
3 siting approval under this Section, but is subject only to  
4 local zoning approval.

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

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