

1                                    AMENDMENT TO HOUSE BILL 422

2            AMENDMENT NO. \_\_\_\_\_. Amend House Bill 422 by replacing  
3 the title with the following:

4            "AN ACT concerning wetlands."; and

5 by replacing everything after the enacting clause with the  
6 following:

7            "Section 1. Short title. This Act may be cited as the  
8 Wetlands Protection Act.

9            Section 5. Scope. This Act does not apply to property  
10 within a municipality with a population greater than 500,000,  
11 nor to property within the incorporated or unincorporated  
12 area of a county with a population greater than 3,000,000.

13            Section 10. Definitions. For the purposes of this Act:

14            (a) "ADID" means those aquatic sites identified by the  
15 United States Environmental Protection Agency and the United  
16 States Army Corps of Engineers as areas generally unsuitable  
17 for disposal of dredged or fill material in accordance with  
18 40 C.F.R. Part 230.80.

19            (b) "Affected property" means any property upon which a  
20 regulated activity is conducted.

1 (c) "Agency" means the Illinois Environmental Protection  
2 Agency.

3 (d) "Agricultural land" means land that is currently  
4 used for normal farming or ranching activities.

5 (e) "Avoidance" means any action taken in a manner such  
6 that a regulated activity will not occur.

7 (f) "Bog" means a peat-accumulating wetland that has no  
8 significant inflows or outflows and supports acidophilic  
9 mosses, particularly sphagnum, resulting in highly acidic  
10 conditions.

11 (g) "Commencing such a regulated activity" means any  
12 steps taken in preparation of conducting a regulated activity  
13 that may impact the affected property, such as cutting,  
14 filling, pumping of water, and earth movement.

15 (h) "Committee" means the Wetlands Advisory Committee.

16 (i) "Contiguous wetland" means a wetland that is  
17 delineated on the affected property and extends beyond the  
18 boundary of that property.

19 (j) "Converted wetland" means a wetland that has been  
20 drained, dredged, filled, leveled, or otherwise manipulated  
21 (including the removal of woody vegetation or any activity  
22 that results in impairing or reducing the flow and  
23 circulation of water) for the purpose of or with the effect  
24 of making possible the production of an agricultural  
25 commodity without further application of the manipulations  
26 described herein if: (i) such production would not have been  
27 possible but for such action, and (ii) before such action  
28 such land was wetland, farmed wetland, or farmed-wetland  
29 pasture and was neither highly erodible land nor highly  
30 erodible cropland.

31 (k) "Corps of Engineers" or "COE" means the United  
32 States Army Corps of Engineers.

33 (l) "Cypress swamp" means forested, permanent or  
34 semi-permanent bodies of water, with species assemblages

1 characteristic of the Gulf and Southeastern Coastal Plains,  
2 including bald cypress, which are restricted to extreme  
3 southern Illinois.

4 (m) "Department" means the Illinois Department of  
5 Natural Resources.

6 (n) "Director" means the Director of Natural Resources.

7 (o) "Fen" means a wetland fed by an alkaline water  
8 source such as a calcareous spring or seep.

9 (p) "Floristic quality index" means an index calculated  
10 using the Floristic Quality Assessment Method of assessing  
11 floristic integrity (or quality) by summing the numerical  
12 quality ratings of all plant species present then dividing  
13 the total by the number of native species present (mean  
14 coefficient of conservatism) or by the square root of the  
15 number of native species (floristic quality index). (Taft,  
16 J.B., G.S. Wilhelm, D.M. Ladd, and L.A. Masters. 1997.  
17 Floristic quality assessment for vegetation in Illinois, a  
18 method for assessing vegetation integrity. *Erigenia* 15:  
19 3-95.)

20 (q) "Incidentally created" means created as a result of  
21 any normal or routine activity coincidental with the conduct  
22 of legitimate business enterprises, except that a wetland or  
23 depression created as mitigation for any activity affecting  
24 wetlands is not "incidentally created."

25 (r) "Incidental fallback" means the redeposit of small  
26 volumes of dredged material that is incidental to excavation  
27 activity in waters of the State when such material falls back  
28 to substantially the same place as the initial removal.

29 (s) "Isolated wetlands" means those areas that are  
30 inundated or saturated by surface or ground water at a  
31 frequency or duration sufficient to support, and that under  
32 normal circumstances do support, a prevalence of vegetation  
33 typically adapted for life in saturated soil conditions, and  
34 that are not regulated under the federal Clean Water Act.

1 (t) "Panne" means wet interdunal flats located near Lake  
2 Michigan.

3 (u) "Person" means an individual, partnership,  
4 co-partnership, firm, company, limited liability company,  
5 corporation, association, joint stock company, trust, estate,  
6 political subdivision, State agency, or other legal entity,  
7 or its legal representative, agent, or assigns.

8 (v) "Prior converted cropland" means a converted wetland  
9 where the conversion occurred prior to December 23, 1985, an  
10 agricultural commodity has been produced at least once before  
11 December 23, 1985, and as of December 23, 1985, the converted  
12 wetland did not support woody vegetation and met the  
13 following hydrologic criteria: (i) inundation was less than  
14 15 consecutive days during the growing season or 10% of the  
15 growing season, whichever is less, in most years (50% chance  
16 or more); and (ii) if a pothole, ponding was less than 7  
17 consecutive days during the growing season in most years (50%  
18 chance or more) and saturation was less than 14 consecutive  
19 days during the growing season most years (50% chance or  
20 more).

21 (w) "Regulated activity" means the discharge of dredged  
22 or fill material into a wetland, the drainage of a wetland,  
23 or excavation of a wetland that results in more than  
24 incidental fallback.

25 (x) "Threatened or endangered species" means those  
26 species that have been designated as threatened or endangered  
27 by the Illinois Endangered Species Protection Board pursuant  
28 to the Illinois Endangered Species Protection Act and those  
29 species that have been designated as threatened or endangered  
30 by the U.S. Fish and Wildlife Service pursuant to the  
31 Endangered Species Act.

32 (y) "Upland" means non-wetland, when used to describe a  
33 particular land use, or non-hydric, when used to describe a  
34 soil type.

1           (z) "Wetlands" means those areas that are inundated or  
2 saturated by surface or ground water at a frequency or  
3 duration sufficient to support, and that under normal  
4 circumstances do support, a prevalence of vegetation  
5 typically adapted for life in saturated soil conditions.

6           Section 20. Exemptions.

7           (a) As long as they do not have as their purpose  
8 bringing a wetland into a use to which it was not previously  
9 subject, the following are not prohibited by or otherwise  
10 subject to regulation under this Act:

11           (1) Normal farming, silviculture, and ranching  
12 activities such as plowing, seeding, cultivating, minor  
13 drainage, harvesting for the production of food, fiber,  
14 and forest products, or upland soil and water  
15 conservation practices.

16           (2) Maintenance, including emergency reconstruction  
17 of recently damaged parts, of currently serviceable  
18 structures such as dikes, dams, levees, groins, riprap,  
19 breakwaters, causeways, and bridge abutments or  
20 approaches, and transportation structures.

21           (3) Construction or maintenance of farm or stock  
22 ponds or irrigation canals or ditches, or the maintenance  
23 of drainage ditches.

24           (4) Construction of temporary sedimentation basins  
25 on a construction site that does not include any  
26 regulated activities within a wetland.

27           (5) Construction or maintenance of farm roads or  
28 forest roads, or temporary roads for moving mining  
29 equipment, where such roads are constructed and  
30 maintained, in accordance with best management practices,  
31 to assure that flow and circulation patterns and chemical  
32 and biological characteristics of the wetland are not  
33 impaired, that the reach of the wetland is not reduced,

1 and that any adverse effect on the aquatic environment  
2 will be otherwise minimized.

3 (6) Except for Class IA and Class IB wetlands,  
4 activities for the placement of pilings for linear  
5 projects, such as bridges, elevated walkways, and power  
6 line structures in accordance with best management  
7 practices, to assure that the flow and circulation  
8 patterns and chemical and biological characteristics of  
9 the wetland are not impaired, that the reach of the  
10 wetland is not reduced, and that any adverse effect on  
11 the aquatic environment will be otherwise minimized.

12 (7) Installation and maintenance of signs,  
13 lighting, and fences and the mowing of vegetation within  
14 existing maintained rights-of-way.

15 (8) Repair and maintenance of existing buildings,  
16 facilities, lawns, and ornamental plantings.

17 (9) Construction projects that have obtained any  
18 necessary building permits from applicable local  
19 jurisdictions prior to the effective date of this Act.

20 (10) Application of media, including deicing media,  
21 on the surface of existing roads for purposes of public  
22 safety.

23 (11) Non-surface disturbing surveys and  
24 investigations for construction, planning, maintenance,  
25 or location of environmental resources.

26 (12) Wetland management practices on lands that are  
27 used primarily for the management of waterfowl, other  
28 migratory water birds, or furbearers if such practices  
29 took place on these lands prior to the effective date of  
30 this Act. This includes vegetation management that may  
31 include the use of fire, chemical, or mechanical  
32 (hydro-axe, bulldozer, roto disk, or similar equipment)  
33 removal of invading woody or herbaceous vegetation to  
34 maintain a preferred successional stage. Use of

1 chemicals must be by a certified applicator and chemicals  
2 must be registered for appropriate use. Clearing or  
3 removal of woody vegetation shall be limited to 4-inch  
4 dbh (diameter at breast height) or smaller material for  
5 the purpose of establishing or maintaining the  
6 successional stage of a wetland as an herbaceous wetland  
7 vegetated by native moist soil plants or selected  
8 wildlife food plants.

9 (b) Any exemption authorized by and pertaining to  
10 wetlands that are subject to regulation under the federal  
11 Clean Water Act, or regulations promulgated thereunder, shall  
12 also be an exemption for the purpose of this Act.

13 (c) The following are not isolated wetlands for purposes  
14 of this Act:

15 (1) Waste treatment systems, including treatment  
16 ponds or lagoons, designed to comply with water quality  
17 standards of the State or to remediate a site in  
18 accordance with an approved Agency program, and former  
19 waste treatment systems that have ceased operation less  
20 than 33 years prior to commencement of the proposed  
21 activity or which are undergoing remediation in  
22 accordance with an approved Agency program.

23 (2) A drainage or irrigation ditch.

24 (3) An artificially irrigated area that would  
25 revert to upland if the irrigation ceased.

26 (4) An artificial lake or pond created by  
27 excavating or diking upland to collect and retain water  
28 for the primary purpose of stock watering, irrigation,  
29 wildlife, fire control, ornamentation or landscaping, or  
30 as a settling pond.

31 (5) Except for isolated wetlands created pursuant  
32 to mining activities regulated in accordance with item

33 (7) below, an incidentally created water-filled  
34 depression, unless: (i) ownership of the property

1 containing the depression has been transferred away from  
2 the party who incidentally created the water-filled  
3 depression, (ii) that ownership transfer occurred more  
4 than 12 months prior to the commencement of an otherwise  
5 regulated activity, (iii) the use of the property has  
6 changed from the use that existed when the property was  
7 transferred from the party who incidentally created the  
8 water-filled depression, and (iv) the resulting body of  
9 water meets the definition in this Act of an isolated  
10 wetland; or if the ownership of the property has not been  
11 transferred from the party who created the incidentally  
12 created water-filled depression, the depression was not  
13 created more than 33 years before the date the  
14 application is received by the Department.

15 (6) Stormwater or spill management systems,  
16 including retention and detention basins, ditches and  
17 channels, and former stormwater or spill management  
18 systems that have ceased operation less than 33 years  
19 prior to commencement of the proposed activity or which  
20 are undergoing remediation in accordance with an approved  
21 Agency program.

22 (7) Waters that undergo mining activities conducted  
23 pursuant to a federal, State, regional, or local permit  
24 that requires the reclamation of the affected wetlands if  
25 the reclamation will be completed within a reasonable  
26 period of time after completion of activities at the site  
27 and, upon completion of such reclamation, the wetlands  
28 will support functions generally equivalent to the  
29 functions supported by the wetlands at the time of  
30 commencement of such activities.

31 (8) Prior converted cropland.

32 Section 25. Applicability. Until June 30, 2007, the  
33 requirements of this Act apply to all isolated wetlands as

1 that term is defined in this Act. In the event that an  
2 isolated wetland ceases to meet that definition because it  
3 becomes subject to regulation under the federal Clean Water  
4 Act, such wetland shall no longer be subject to the  
5 provisions of this Act.

6 Beginning July 1, 2007, the requirements of this Act  
7 apply to all wetlands as that term is defined in this Act,  
8 unless a COE permit is required; provided, however, that if  
9 an exemption under Section 20 applies, that exemption shall  
10 continue in effect after July 1, 2007.

11 The Department on behalf of the State of Illinois may  
12 enter into written delegation agreements with the Corps of  
13 Engineers under which it may assume all or portions of COE  
14 authority under the federal Clean Water Act. Such delegation  
15 agreements shall provide, at a minimum, that all delineation,  
16 classification, notification, and permitting requirements  
17 shall be at least as stringent as those contained in this  
18 Act.

19 Section 30. Wetlands delineation, classification,  
20 notification, permits. The requirements of this Section  
21 apply upon the adoption of rules under Sections 45(c) and 60  
22 of this Act, or 270 days from the effective date of this Act,  
23 whichever occurs first.

24 (a) The procedures and regulatory criteria for the  
25 delineation, classification, notification, and permitting for  
26 wetlands shall be conducted in accordance with the provisions  
27 of this Section.

28 (b) Any person who intends to conduct a regulated  
29 activity within the State may request a determination from  
30 the Department as to the existence, location, and surface  
31 area of any wetlands on or contiguous to the affected  
32 property. Nothing in this Section shall require the person  
33 to seek such a determination; however, failure to seek and

1 obtain a determination shall not be a defense against a  
2 violation of this Act.

3 The person seeking a determination shall provide the  
4 Department with sufficient information to render such a  
5 determination. Such information shall include a wetland  
6 delineation made in accordance with the COE Wetlands  
7 Delineation Manual, Technical Report Y-87-1. Delineation of  
8 the portion of a contiguous wetland not on the affected  
9 property shall be made to the extent reasonably possible, and  
10 methods other than physical onsite evaluations shall be  
11 considered by the Department.

12 The Department shall provide notice to the applicant as  
13 to whether a submitted application is complete. Unless the  
14 Department notifies the applicant that the application is  
15 incomplete within 15 days of receipt of the application, the  
16 application shall be deemed complete. The Department may  
17 request additional information as needed to make the  
18 completeness determination.

19 The Department shall, upon receipt of a complete  
20 determination request, provide the person, within 30 days,  
21 with a determination as to the existence, location, and  
22 surface area of wetlands located on or contiguous to the  
23 affected property.

24 If the Department determines that there are no wetlands  
25 on the affected property, any otherwise regulated activity  
26 conducted on the property shall not be subject to the  
27 provisions of this Act.

28 If the Department determines that there is one or more  
29 wetlands on or contiguous to the affected property, the  
30 person may apply to the Department for classification of such  
31 wetlands.

32 Any determination of a wetland by the Department is a  
33 final decision for purposes of appeal.

34 (c) If any person intends to conduct a regulated

1 activity, such person may, prior to commencing such a  
2 regulated activity, request that the wetland be classified as  
3 Class IA, IB, II, or III in accordance with the provisions of  
4 this Section. Nothing in this Section shall require the  
5 person to seek such a classification; however, any wetlands  
6 not so classified shall be considered Class IA for the  
7 purposes of this Act.

8 The person seeking a classification shall provide the  
9 Department with sufficient information to render such a  
10 classification. Such information shall include a wetland  
11 delineation made in accordance with the COE Wetlands  
12 Delineation Manual, Technical Report Y-87-1.

13 Unless the Department notifies the applicant that the  
14 application is incomplete within 15 days of receipt of the  
15 application, the application shall be deemed complete. The  
16 Department may request additional information as needed to  
17 make the completeness determination. The Department shall,  
18 upon receipt of a complete classification request, provide  
19 the person, within 30 days, with a classification of wetlands  
20 located on or contiguous to the affected property. If the  
21 Department fails to provide the person with a classification  
22 within 30 days, the classification requested by the person  
23 shall be deemed granted.

24 Wetlands shall be classified as follows:

25 (1) The Department shall classify a wetland as a  
26 Class IA Wetland if and only if:

27 (A) the wetland is or encompasses a bog;  
28 (B) the wetland is or encompasses a fen;  
29 (C) the wetland is or encompasses a panne;  
30 (D) the wetland is or encompasses a cypress  
31 swamp;

32 (E) the wetland is or encompasses a Category I  
33 Illinois Natural Areas Inventory Site, provided that  
34 the Department shall disclose within 5 working days

1 of a request from an applicant, a prospective  
2 applicant, or a qualified professional on behalf of  
3 an applicant or a prospective applicant whether a  
4 site identified by latitude and longitude includes a  
5 Category I Illinois Natural Areas Inventory Site; or  
6 (F) a threatened or endangered species has  
7 been identified in the wetland.

8 (2) The Department shall classify a wetland as a  
9 Class IB Wetland if and only if the wetland:

10 (A) is or encompasses an ADID site;

11 (B) is or encompasses a Category VI Illinois  
12 Natural Area Inventory Site or regional equivalent;  
13 provided that the Department shall disclose within 5  
14 working days of a request from an applicant, a  
15 prospective applicant, or a qualified professional  
16 on behalf of an applicant or a prospective applicant  
17 whether a site identified by latitude and longitude  
18 includes a Category VI Illinois Natural Areas  
19 Inventory Site; or

20 (C) has a Floristic Quality Index (FQI) which  
21 is equal to or greater than 20 or a mean coefficient  
22 of conservatism (Mean C) equal to or greater than  
23 3.5, determined in accordance with rules adopted by  
24 the Department.

25 (3) The Department shall classify a wetland as a  
26 Class II Wetland if and only if the wetland is not a  
27 Class I-A, Class I-B, or Class III wetland.

28 (4) The Department shall classify a wetland as a  
29 Class III Wetland if and only if:

30 (A) the wetland is not a Class IA or Class  
31 IB wetland; and

32 (B) the total size of the wetland, including  
33 contiguous areas, is

34 (i) less than 0.25 acre, or

1 (ii) less than 0.5 acre if the wetland is  
2 in a county that does not have authority to  
3 establish a stormwater management program under  
4 Section 5-1062 of the Counties Code and the  
5 wetland is in agricultural land.

6 (d) Subject to the provisions of Section 40 regarding  
7 general permits, no person may conduct or cause to be  
8 conducted a regulated activity within or affecting a wetland  
9 in such a manner that the biological or hydrological  
10 integrity of the wetland is impaired within the scope of this  
11 Act, except in accordance with the terms of an individual  
12 permit issued by the Department or authorization to proceed  
13 as applicable under this Section.

14 (1) Class IA Wetlands:

15 (A) A permit to conduct a regulated activity  
16 affecting a Class IA wetland within the scope of  
17 this Act shall be granted if documentation is  
18 submitted that demonstrates that complete avoidance  
19 of impacts to the Class IA wetland precludes all  
20 economic use of the entire parcel and that no  
21 practicable alternative to wetland modification  
22 exists.

23 Based upon a review of the submitted  
24 documentation and any other available resources, the  
25 Department shall make a determination as to whether  
26 the proposed modification represents the least  
27 amount of wetland impact required to restore an  
28 economic use to the upland portion of the parcel.

29 Wetland losses shall be mitigated at a ratio of  
30 4.5:1 and shall be mitigated in kind and within the  
31 same watershed as the impacted area restoring, to  
32 the maximum degree practicable as determined by the  
33 Department, both the type and functions of the  
34 wetland that will be affected by the regulatory

1 activity.

2 The Director, for good cause shown and on a  
3 case-by-case basis, may authorize an upward or  
4 downward departure from the mitigation ratio  
5 otherwise required under this subdivision (d)(1),  
6 but for a Class IA wetland the Director shall  
7 require a mitigation ration of at least 4:1 and  
8 shall not require a mitigation ratio greater than  
9 5:1.

10 (B) No permit under this subdivision (d)(1)  
11 may be issued by the Department without a public  
12 notice and a public hearing.

13 (2) Class IB Wetlands:

14 (A) A permit to conduct a regulated activity  
15 affecting a Class IB wetland within the scope of  
16 this Act shall be granted if documentation is  
17 submitted that demonstrates that no practicable  
18 alternative to wetland modification exists.

19 Based upon a review of the submitted  
20 documentation and any other available resources, the  
21 Department shall make a determination as to whether  
22 the proposed modification constitutes the least  
23 amount of wetland impact practicable and whether a  
24 permit should be granted.

25 Wetland losses shall be mitigated at a ratio of  
26 3:1 and shall be mitigated in kind and within the  
27 same watershed as the impacted area, restoring both  
28 the type and functions of the wetlands that will be  
29 affected by the regulated activity.

30 The Director, for good cause shown and on a  
31 case-by-case basis, may authorize an upward or  
32 downward departure from the mitigation ratio  
33 otherwise required under this subdivision (d)(2),  
34 but for a Class IB wetland the Director shall

1 require a mitigation ration of at least 2.5:1 and  
2 shall not require a mitigation ratio greater than  
3 3.5:1.

4 (B) No permit under this subdivision (d)(2)  
5 may be issued by the Department without a public  
6 notice and opportunity for public hearing being  
7 afforded. The Department shall hold a public  
8 hearing concerning a permit application if the  
9 proposed activity may have a significant impact upon  
10 wetland resources or if the Department determines  
11 that a public hearing is otherwise appropriate.

12 (3) Class II Wetlands:

13 (A) A permit to conduct a regulated activity  
14 affecting a Class II wetland within the scope of  
15 this Act shall be granted if documentation is  
16 submitted demonstrating that no reasonable  
17 alternative to wetland modification exists.

18 Based upon a review of the submitted  
19 documentation and any other available resources, the  
20 Department shall make a determination as to whether  
21 the proposed modification constitutes the least  
22 amount of wetland impact practicable and whether a  
23 permit should be granted.

24 Wetland losses shall be mitigated at a ratio of  
25 1.5:1 and shall be mitigated in kind and within the  
26 same watershed as the impacted area, restoring both  
27 the type and functions of the wetland that will be  
28 affected by the regulated activity.

29 (B) No permit under this subdivision (d)(3)  
30 may be issued by the Department without a public  
31 notice and opportunity for public hearing being  
32 afforded. The Department shall hold a public  
33 hearing concerning a permit application if the  
34 proposed activity may have a significant impact upon

1 wetland resources or if the Department determines  
2 that a public hearing is otherwise appropriate.

3 (4) Class III Wetlands:

4 (A) No regulated activity covered under this  
5 Act that will impact an area that has been  
6 classified as a Class III wetland may be undertaken  
7 without prior notification to the Department.

8 (B) Such notification shall include (1) a  
9 sketch that reasonably depicts the area that will be  
10 affected by the regulated activity, including  
11 wetland and water boundaries for the areas affected  
12 and the existing land uses and structures; (2) a  
13 description of the proposed activity, including its  
14 purpose; (3) a description of any public benefit to  
15 be derived from the proposed project; and (4) the  
16 names and addresses of adjacent landowners as  
17 determined by the current tax assessment rolls.

18 (C) Upon receipt of a notification of intent,  
19 the Department shall verify that the regulated  
20 activity will affect a wetland that it previously  
21 classified as Class III.

22 If the Department so verifies, the Department  
23 shall send the person, within 30 days of the receipt  
24 of such notification, a response stating that the  
25 regulated activity may proceed.

26 If the Department cannot so verify, the  
27 Department shall send the person, within 30 days of  
28 the receipt of such notification, a response stating  
29 that no classification has been made by the  
30 Department, or that a Classification of IA, IB, or  
31 II was made and that the regulated activity may not  
32 proceed until either a classification is made  
33 pursuant to this Section, or a permit is obtained,  
34 as applicable.

1 Failure of the Department to respond to a  
2 notification shall be deemed an authorization to  
3 proceed.

4 (D) No permit shall be required for a  
5 regulated activity covered under this Act that will  
6 impact an area that has been classified as a Class  
7 III wetland.

8 (e) Within 15 days of the receipt of a permit  
9 application, the Department shall determine if an application  
10 is complete. To be deemed complete, an application must  
11 provide all information, as requested in Department  
12 application forms, sufficient to evaluate the application.  
13 Such information shall include, at a minimum: (1) a map of  
14 the area that will be affected by the activity, including  
15 wetland and water boundaries for the areas affected and the  
16 existing uses and structures. Such information shall include  
17 a wetland delineation made in accordance with the COE  
18 Wetlands Delineation Manual, Technical Report Y-87-1; (2) a  
19 description of the proposed activity, including its purpose,  
20 the location and dimensions of any structures, grading or  
21 fills, drainage, roads, sewers and water supply, parking  
22 lots, stormwater facilities, discharge of pollutants, and  
23 onsite waste disposal; (3) a description of any public  
24 benefit to be derived from the proposed project; and (4) the  
25 names and addresses of adjacent landowners as determined by  
26 the current tax assessment rolls. The Department application  
27 forms shall be finalized and made available prior to the date  
28 on which any application is required. The Department shall  
29 provide notice to the applicant as to whether a submitted  
30 application is complete. Unless the Department notifies the  
31 applicant that the application is incomplete within 20 days  
32 of receipt of the application, the application shall be  
33 deemed complete. The Department may request additional  
34 information as needed to make the completeness determination.

1 The Department may, to the extent practicable, provide the  
2 applicant with a reasonable opportunity to correct  
3 deficiencies prior to a final determination of completeness.  
4 Within 90 days from the receipt of a complete application for  
5 permit, the Department shall either issue or deny the permit  
6 or issue it with conditions. If a public hearing is held on  
7 the application, however, this period shall be extended by 45  
8 days.

9 (f) The Department shall not issue a permit pursuant to  
10 this Section unless the Agency has certified that the  
11 proposed activity will not cause or contribute to a violation  
12 of any State water quality standard. The Agency will be  
13 deemed to have certified that the proposed activity will not  
14 cause or contribute to a violation of any State water quality  
15 standard if it has not declined in writing to so certify  
16 within 80 days of the filing of the application unless the  
17 Agency has requested that the applicant supply more  
18 information relevant to assessing the water quality impacts  
19 of the proposed activity. If a public hearing is held on the  
20 application, however, this period shall be extended by 45  
21 days.

22 (g) A person may submit concurrent requests for (i)  
23 determination and delineation, (ii) classification, and (iii)  
24 issuance of a permit or notification. The Department shall  
25 act on such combined requests concurrently in accordance with  
26 expedited permitting procedures adopted by the Department.

27 (h) Any person may submit an application for an  
28 after-the-fact permit to be issued under this Act, and the  
29 Department is authorized to issue such an after-the-fact  
30 permit if it determines that the activities covered by the  
31 after-the-fact permit application were undertaken and  
32 conducted in response to emergency circumstances where there  
33 may be an imminent threat to persons, public infrastructure,  
34 personal property, or uninterrupted utility service that made

1 it impracticable for the applicant to obtain prior  
2 authorization under this Act to undertake and conduct such  
3 activities. The applicant shall be required to demonstrate  
4 that it provided notice to the Department of the emergency  
5 circumstances as soon as reasonably possible following the  
6 discovery of such circumstances.

7 (i) The Department shall adopt rules to carry out the  
8 provisions of this Section in accordance with Section 45 of  
9 this Act.

10 Section 35. Surety. The Department may provide by rule  
11 for any requirements regarding bonds or letters of credit in  
12 favor of the State, including conditions sufficient to secure  
13 compliance with conditions and limitations of a permit.

14 Section 40. General permits.

15 (a) Notwithstanding Section 30, any person who intends  
16 to conduct a regulated activity within the State may do so in  
17 accordance with a general permit issued by the Department  
18 under this Section.

19 (b) Permits for all categories of activities, subject to  
20 the same permit limitations and conditions, that are the  
21 subject of a nationwide permit issued by the Corps of  
22 Engineers in effect on the date of the enactment of this Act,  
23 are adopted as general permits covering regulated activities  
24 subject to this Act.

25 (c) The Department may adopt general permits covering  
26 other activities that would be subject to the same permit  
27 limitations and conditions, if it determines that the  
28 activities in such category will cause only minimal adverse  
29 environmental effects when performed separately, will have  
30 only minimal cumulative adverse effect on the environment,  
31 will not cause or contribute to a violation of State water  
32 quality standards when performed separately, and will have

1 only a minimal cumulative adverse effect on water quality.  
2 The Department may prescribe best management practices for  
3 any general permit issued under this Section. The Department  
4 shall consider any optional mitigation proposed by an  
5 applicant in determining whether the net adverse  
6 environmental effects of a proposed regulated activity are  
7 minimal.

8 Specifically, the Department must adopt general permits  
9 for each of the following:

10 (1) The construction or maintenance of access roads  
11 for utility lines, substations or related equipment or  
12 facilities.

13 (2) Activities for the purpose of preserving and  
14 enhancing aviation safety or to prevent an airport  
15 hazard.

16 (d) No general permit adopted under this Section shall  
17 be for a period of more than 5 years after the date of its  
18 issuance. A general permit may be revoked or modified by the  
19 Department if, after opportunity for public hearing, the  
20 Department determines that the activities authorized by the  
21 general permit have an adverse impact on the environment,  
22 cause or contribute to a violation of State water quality  
23 standards, or are more appropriately authorized by individual  
24 permits.

25 (e) Compliance with the terms of a general permit shall  
26 be deemed compliance with the provisions of this Act if the  
27 applicant (i) files a notice of intent to be covered under  
28 the provisions of the general permit in accordance with  
29 regulations adopted pursuant to this Act and (ii) files any  
30 reports required by the general permit.

31 (f) The Department shall respond to a notice of intent  
32 to proceed under a general permit issued under this Section  
33 within 30 days after the Department receives the notice. In  
34 the event that the Department fails to respond to a notice of

1 intent to proceed within 30 days as required by this  
2 subsection (f), the person submitting the notice shall be  
3 deemed fully authorized to conduct the activities described  
4 in the notice under the terms and conditions of the  
5 applicable general permit.

6 Section 45. Wetlands Advisory Committee; duties; rules

7 (a) There is hereby established a Wetlands Advisory  
8 Committee, which shall consist of 17 members appointed by the  
9 Governor and 2 non-voting members.

10 The Committee shall include 7 members selected from among  
11 the following organizations:

- 12 (1) The Illinois State Chamber of Commerce.
- 13 (2) The Illinois Association of Realtors.
- 14 (3) The Chemical Industry Council of Illinois.
- 15 (4) The Consulting Engineers Council of Illinois.
- 16 (5) The Illinois Association of Aggregate  
17 Producers.
- 18 (6) The Illinois Association of Home Builders.
- 19 (7) The Illinois Energy Association.
- 20 (8) The Illinois Manufacturers Association.
- 21 (9) The National Solid Waste Management  
22 Association.
- 23 (10) The Illinois Farm Bureau.

24 The Committee shall include 5 members selected from the  
25 membership of environmental and conservation groups in the  
26 State.

27 The Committee shall include 2 members representing  
28 counties exercising authority under Section 5-1062 or  
29 5-1062.1 of the Counties Code to establish stormwater  
30 management programs.

31 The Committee shall include 3 other members as determined  
32 by the Governor.

33 The Director of Natural Resources, or his or her

1 designee, and the Director of the Illinois Environmental  
2 Protection Agency, or his or her designee, shall be  
3 non-voting members of the Committee.

4 The Committee shall biannually elect from its membership  
5 a Chair, who shall not be an employee of the Illinois  
6 Environmental Protection Agency or the Illinois Department of  
7 Natural Resources.

8 Members of the Advisory Committee may organize themselves  
9 as they deem necessary and shall serve without compensation.

10 The Department shall provide reasonable and necessary  
11 staff support to the Committee.

12 (b) Within 120 days after the effective date of this  
13 Act, the Committee shall recommend rules to the Department.  
14 From time to time the Committee shall review, evaluate, and  
15 make recommendations (i) regarding State laws, rules, and  
16 procedures that relate to this Act and (ii) relating to the  
17 State's efforts to implement this Act.

18 (c) Within 6 months after the effective date of this  
19 Act, the Department, after consideration of the  
20 recommendations of the Committee (or if the Committee for any  
21 reason has not made recommendations, the Department itself),  
22 shall adopt any rules required by this Act prescribing  
23 procedures and standards for its administration. Nothing in  
24 this Act shall preclude, at any time, the recommendation,  
25 proposal, or adoption of any other rules deemed necessary for  
26 the orderly implementation of this Act.

27 (d) The Committee shall develop a plan for statewide  
28 wetlands protection and shall submit such plan to the  
29 Department. The Department may seek to obtain a delegation  
30 of COE authority under Section 404 of the federal Clean Water  
31 Act for all wetlands in Illinois on or before July 1, 2007 in  
32 accordance with Section 25 of this Act.

33 (e) The Committee shall assist counties having  
34 stormwater management authority under Section 5-1062 or

1 5-1062.1 of the Counties Code in coordinating and unifying  
2 stormwater management regulations adopted thereto, as  
3 required in Section 65(f) of this Act.

4 Section 50. Appeal of final Department decision;  
5 judicial review.

6 (a) Any permit applicant who has been denied a permit in  
7 whole or in part, and any person who participated in the  
8 permit proceeding and who is aggrieved by a decision of the  
9 Department to grant a permit in whole or in part, may appeal  
10 the decision to the Director within 35 days of the permit  
11 grant or denial. However, the 35-day period for appealing to  
12 the Director may be extended by the applicant for a period of  
13 time not to exceed 90 days by written notice provided to the  
14 Director. In all such appeals, the burden of persuasion  
15 shall be on the party appealing the Department's decision.

16 (b) A person aggrieved by a final decision made pursuant  
17 to this Act may seek judicial review of the decision pursuant  
18 to the Administrative Review Law.

19 Section 55. Investigation; enforcement.

20 (a) In accordance with constitutional limitations, the  
21 Department shall have authority to enter at all reasonable  
22 times upon any private or public property for the purpose of  
23 inspecting and investigating to ascertain possible violations  
24 of this Act or of rules adopted hereunder, or of permits or  
25 terms or conditions thereof.

26 (b) The civil penalties provided for in this Section may  
27 be recovered in a civil action which may be instituted in a  
28 court of competent jurisdiction. The State's Attorney of the  
29 county in which the alleged violation occurred, or the  
30 Attorney General, may, at the request of the Department or on  
31 his or her own motion, institute a civil action in a court of  
32 competent jurisdiction to recover civil penalties and to

1 obtain an injunction to restrain violations of the Act.

2 (c) Any person who violates any provision of this Act or  
3 any rule adopted hereunder, or any permit or term or  
4 condition thereof, shall be liable for a civil penalty of not  
5 to exceed \$10,000 per day of violation; such penalties may be  
6 made payable to the Wetlands Protection Fund and shall be  
7 deposited into that Fund as provided in subsection (j). In  
8 determining the appropriate civil penalty to be imposed under  
9 this Section, the Court is authorized to consider any matters  
10 of record in mitigation or aggravation of penalty, including  
11 but not limited to the following factors:

12 (1) The duration and gravity of the violation.

13 (2) The presence or absence of due diligence on the  
14 part of the violator in attempting to comply with  
15 requirements of this Act and rules adopted hereunder or  
16 to secure relief therefrom as provided by this Act.

17 (3) Any economic benefits accrued by the violator  
18 through the violation.

19 (4) The amount of monetary penalty which will serve  
20 to deter further violations by the violator and to  
21 otherwise aid in enhancing voluntary compliance with this  
22 Act by the violator and other persons similarly subject  
23 to this Act.

24 (5) The number, proximity in time, and gravity of  
25 previously adjudicated violations of this Act by the  
26 violator.

27 (d) Any violation of any provision of this Act or any  
28 rule adopted hereunder, or any permit or term or condition  
29 thereof, shall not be deemed a criminal offense.

30 (e) All final orders imposing civil penalties pursuant  
31 to this Section shall prescribe the time for payment of such  
32 penalties. If any such penalty is not paid within the time  
33 prescribed, interest on such penalty at the rate set forth in  
34 subsection (a) of Section 1003 of the Illinois Income Tax Act

1 shall be paid for the period from the date payment is due  
2 until the date payment is received. However, if the time for  
3 payment is stayed during the pendency of an appeal, interest  
4 shall not accrue during such stay.

5 (f) The Department may terminate a permit if the holder  
6 substantially violates any condition of the permit, obtains a  
7 permit by misrepresentation, or fails to disclose relevant  
8 facts.

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

26 (h) Any penalty assessed pursuant to this Act, including  
27 costs of wetland restoration and any restoration requirement,  
28 shall be recorded by the clerk of the court as a lien against  
29 the land and shall not be removed until the penalty is paid  
30 or the restoration is completed.

31 (i) All costs, fees, and expenses in connection with an  
32 enforcement or restoration action shall be assessed as  
33 damages against the violator.

34 (j) All penalties collected under this Section shall be

1 deposited into the Wetlands Protection Fund.

2 (k) Enforcement actions under this Section may be  
3 concurrent or separate.

4 Section 60. Fees.

5 (a) Within 90 days after the effective date of this Act  
6 the Department shall propose to the Illinois Pollution  
7 Control Board, and within 6 months of receiving that proposal  
8 the Board shall adopt by rule:

9 (1) a minimal processing fee for notification  
10 regarding Class III Wetlands and for processing a notice  
11 of intent to proceed under a general permit; and

12 (2) a schedule of permit fees for single regulated  
13 activities in Class IA, Class IB, and Class II wetlands.

14 (b) These fees shall be set at levels that allow the  
15 wetlands program to operate financially on a self-sustaining  
16 basis. The Department shall annually review the fees to  
17 determine whether the wetlands program is operating  
18 financially on a self-sustaining basis, and it may propose  
19 any necessary changes in the fees to the Illinois Pollution  
20 Control Board.

21 Section 65. County authority.

22 (a) Nothing in this Act preempts or denies the right of  
23 any governmental body with a stormwater management program  
24 under Section 5-1062 of the Counties Code to control or  
25 regulate activities in any wetlands within the jurisdiction  
26 of the governmental body, subject to subsection (b).

27 (b) Upon the request of a governmental body with a  
28 stormwater management program under Section 5-1062 of the  
29 Counties Code, the Director shall, within 30 calendar days of  
30 receiving the request, provide a letter recognizing whether  
31 the governmental body's stormwater management program:

32 (1) provides wetlands protection consistent with

1 the intent of this Act; and

2 (2) has an administration and qualified staff to  
3 implement the governmental body's stormwater management  
4 program.

5 (c) Activities within or affecting wetlands that occur  
6 within the jurisdiction of the governmental body with a  
7 stormwater management program under Section 5-1062 of the  
8 Counties Code that meets the provisions of subdivisions  
9 (b)(1) and (b)(2) of this Section are exempt from the  
10 requirements of this Act, but must meet those county  
11 stormwater management requirements, at a minimum. This  
12 exemption also applies during the period that the Department  
13 is considering a county's request under subsection (b).  
14 Until a request has been submitted under subsection (b), the  
15 requirements of this Act shall apply.

16 (d) The Director may rescind recognition status in the  
17 event that the governmental body with a stormwater management  
18 program under Section 5-1062 of the Counties Code no longer  
19 meets the provisions of subdivisions (b)(1) and (b)(2) of  
20 this Section.

21 (e) A governmental body with a stormwater management  
22 program under Section 5-1062 of the Counties Code that has  
23 obtained recognition by the Director under subsection (b) of  
24 this Section shall submit an annual report to the Director.

25 (f) Counties having authority under Section 5-1062 of  
26 the Counties Code to adopt a stormwater management program  
27 shall seek with the assistance of the Northeastern Illinois  
28 Planning Commission to coordinate and unify regulations  
29 adopted pursuant thereto.

30 (g) Nothing in this Act shall be construed as a  
31 limitation or preemption of any home rule power.

32 Section 70. Wetlands Protection Fund. All fees and  
33 penalties collected by the Department pursuant to this Act

1 shall be deposited into the Wetlands Protection Fund, which  
2 is hereby created as a special fund in the State Treasury.  
3 In addition to any moneys that may be appropriated from the  
4 General Revenue Fund, the Illinois General Assembly shall  
5 appropriate moneys in the Wetlands Protection Fund to the  
6 Department in amounts deemed necessary to implement this Act.

7 Section 95. The State Finance Act is amended by adding  
8 Section 5.595 as follows:

9 (30 ILCS 105/5.595 new)

10 Sec. 5.595. The Wetlands Protection Fund.

11 Section 97. Severability. The provisions of this Act  
12 are severable under Section 1.31 of the Statute on Statutes.

13 Section 99. Effective date. This Act takes effect upon  
14 becoming law."