



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB3859

Introduced 2/26/2009, by Rep. Jack D. Franks

SYNOPSIS AS INTRODUCED:

415 ILCS 5/28.5 new

Amends the Environmental Protection Act. Reenacts a Section concerning fast-track rulemaking for the Clean Air Act. Defines the terms "fast-track rulemaking" and "requires to be adopted." Provides that if the Clean Air Act Amendments of 1990 require the adoption of rules other than identical in substance rules, then the Pollution Control Board must adopt rules under fast-track rulemaking if requested to do so by the Illinois Environmental Protection Agency. Sets out the form for a fast-track rulemaking proposal. Sets out the procedure for a fast-track rulemaking. Provides that the Board must accept evidence and comments on the economic impact of any provision of the rule and must consider the economic impact of the rule in any fast-track rulemaking proceeding. Effective immediately.

LRB096 01977 JDS 11987 b

FISCAL NOTE ACT
MAY APPLY

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5 reenacting and changing Section 28.5 (which was repealed on
6 December 31, 2007) as follows:

7 (415 ILCS 5/28.5 new)

8 Sec. 28.5. Clean Air Act rules; fast-track.

9 (a) This Section applies through December 31, 2014 and
10 applies solely to the adoption of rules proposed by the Agency
11 and required to be adopted by the State under the Clean Air Act
12 as amended by the Clean Air Act Amendments of 1990 (CAAA).

13 (b) For purposes of this Section, a "fast-track" rulemaking
14 proceeding is a proceeding to promulgate a rule that the CAAA
15 requires to be adopted. For the purposes of this Section,
16 "requires to be adopted" refers only to those regulations or
17 parts of regulations for which the United States Environmental
18 Protection Agency is empowered to impose sanctions against the
19 State for failure to adopt such rules. All fast-track rules
20 must be adopted under procedures set forth in this Section,
21 unless another provision of this Act specifies the method for
22 adopting a specific rule.

23 (c) When the CAAA requires rules other than identical in

1 substance rules to be adopted, upon request by the Agency, the
2 Board must adopt rules under fast-track rulemaking
3 requirements.

4 (d) The Agency must submit its fast-track rulemaking
5 proposal in the following form:

6 (1) The Agency must file the rule in a form that meets
7 the requirements of the Illinois Administrative Procedure
8 Act and regulations promulgated thereunder.

9 (2) The cover sheet of the proposal shall prominently
10 state that the rule is being proposed under this Section.

11 (3) The proposal shall clearly identify the provisions
12 and portions of the federal statute, regulations,
13 guidance, policy statement, or other documents upon which
14 the rule is based.

15 (4) The supporting documentation for the rule shall
16 summarize the basis of the rule.

17 (5) The Agency must describe in general the alternative
18 selected and the basis for the alternative.

19 (6) The Agency must file a summary of economic and
20 technical data upon which it relied in drafting the rule.

21 (7) The Agency must provide a list of any documents
22 upon which it directly relied in drafting the rule or upon
23 which it intends to rely at the hearings and must provide
24 such documents to the Board. Additionally, the Agency must
25 make such documents available at an appropriate location
26 for inspection and copying at the expense of the interested

1 party.

2 (8) The Agency must include in its submission a
3 description of the geographical area to which the rule is
4 intended to apply, a description of the process or
5 processes affected, an identification by classes of the
6 entities expected to be affected, and a list of sources
7 expected to be affected by the rule to the extent known to
8 the Agency.

9 (e) Within 14 days of receipt of the proposal, the Board
10 must file the rule for first notice under the Illinois
11 Administrative Procedure Act and must schedule all required
12 hearings on the proposal and cause public notice to be given in
13 accordance with the Illinois Administrative Procedure Act and
14 the CAAA.

15 (f) The Board must set 3 hearings on the proposal, each of
16 which shall be scheduled to continue from day to day, excluding
17 weekends and State and federal holidays, until completed. The
18 Board must require the written submission of all testimony at
19 least 10 days before a hearing, with simultaneous service to
20 all participants of record in the proceeding as of 15 days
21 prior to hearing, unless a waiver is granted by the Board for
22 good cause. In order to further expedite the hearings,
23 presubmitted testimony shall be accepted into the record
24 without the reading of the testimony at hearing, provided that
25 the witness swears to the testimony and is available for
26 questioning, and the Board must make every effort to conduct

1 the proceedings expeditiously and avoid duplication and
2 extraneous material.

3 (1) The first hearing shall be held within 55 days of
4 receipt of the rule and shall be confined to testimony by
5 and questions of the Agency's witnesses concerning the
6 scope, applicability, and basis of the rule. Within 7 days
7 after the first hearing, any person may request that the
8 second hearing be held.

9 (A) If, after the first hearing, the Agency and
10 affected entities are in agreement on the rule, the
11 United States Environmental Protection Agency has not
12 informed the Board of any unresolved objection to the
13 rule, and no other interested party contests the rule
14 or asks for the opportunity to present additional
15 evidence, the Board may cancel the additional
16 hearings. When the Board adopts the final order under
17 these circumstances, it shall be based on the Agency's
18 proposal as agreed to by the parties.

19 (B) If, after the first hearing, the Agency and
20 affected entities are in agreement upon a portion of
21 the rule, the United States Environmental Protection
22 Agency has not informed the Board of any unresolved
23 objections to that agreed portion of the rule, and no
24 other interested party contests that agreed portion of
25 the rule or asks for the opportunity to present
26 additional evidence, the Board must proceed to the

1 second hearing, as provided in paragraph (2) of
2 subsection (g) of this Section, but the hearing shall
3 be limited in scope to the unresolved portion of the
4 proposal. When the Board adopts the final order under
5 these circumstances, it shall be based on such portion
6 of the Agency's proposal as agreed to by the parties.

7 (2) The second hearing shall be scheduled to commence
8 within 30 days of the first day of the first hearing and
9 shall be devoted to presentation of testimony, documents,
10 and comments by affected entities and all other interested
11 parties.

12 (3) The third hearing shall be scheduled to commence
13 within 14 days after the first day of the second hearing
14 and shall be devoted solely to any Agency response to the
15 material submitted at the second hearing and to any
16 response by other parties. The third hearing shall be
17 cancelled if the Agency indicates to the Board that it does
18 not intend to introduce any additional material.

19 (g) In any fast-track rulemaking proceeding, the Board must
20 accept evidence and comments on the economic impact of any
21 provision of the rule and must consider the economic impact of
22 the rule based on the record. The Board may order an economic
23 impact study in a manner that will not prevent adoption of the
24 rule within the time required by subsection (n) of this
25 Section.

26 (h) In all fast-track rulemakings under this Section, the

1 Board must take into account factors set forth in subsection
2 (a) of Section 27 of this Act.

3 (i) The Board must adopt rules in the fast-track rulemaking
4 docket under the requirements of this Section that the CAAA
5 requires to be adopted, and may consider a non-required rule in
6 a second docket that shall proceed under Title VII of this Act.

7 (j) The Board is directed to take whatever measures are
8 available to it to complete fast-track rulemaking as
9 expeditiously as possible consistent with the need for careful
10 consideration. These measures shall include, but not be limited
11 to, having hearings transcribed on an expedited basis.

12 (k) Following the hearings, the Board must close the record
13 14 days after the availability of the transcript.

14 (l) The Board must not revise or otherwise change an Agency
15 fast-track rulemaking proposal without agreement of the Agency
16 until after the end of the hearing and comment period. Any
17 revisions to an Agency proposal shall be based on the record of
18 the proceeding.

19 (m) All rules adopted by the Board under this Section shall
20 be based solely on the record before it.

21 (n) The Board must complete a fast-track rulemaking by
22 adopting a second notice order no later than 130 days after
23 receipt of the proposal if no third hearing is held and no
24 later than 150 days if the third hearing is held. If the order
25 includes a rule, the Illinois Board must file the rule for
26 second notice under the Illinois Administrative Procedure Act

1 within 5 days after adoption of the order.

2 (o) Upon receipt of a statement of no objection to the rule
3 from the Joint Committee on Administrative Rules, the Board
4 must adopt the final order and submit the rule to the Secretary
5 of State for publication and certification within 21 days.

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