



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

HB5293

by Rep. Jerry Costello, II

#### SYNOPSIS AS INTRODUCED:

520 ILCS 10/5.5

520 ILCS 10/5.6 new

520 ILCS 10/6

from Ch. 8, par. 336

520 ILCS 10/7

from Ch. 8, par. 337

Amends the Illinois Endangered Species Protection Act. Provides that a permit for incidental taking under the Act shall not be required if a federal conservation agreement, including but not limited to, a candidate conservation agreement, habit conservation plan, or safe harbor agreement, is in effect and approved by the United States Fish and Wildlife Service under the federal Endangered Species Act of 1973. Provides that in making Endangered Species Protection Board appointments of naturalists, the Governor shall give consideration to recommendations of conservation groups. Provides that of the remaining appointed members, 2 members shall be landowners representing the State's largest general farm organization. Removes the exemption for notice or public hearing when the Endangered Species Protection Board automatically places a species or subspecies of an animal or plant on the Illinois endangered list after designation as endangered by the U.S. Secretary of Interior. Effective immediately.

LRB100 19183 SLF 34448 b

1 AN ACT concerning wildlife.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Endangered Species Protection Act  
5 is amended by changing Sections 5.5, 6, and 7 and by adding  
6 Section 5.6 as follows:

7 (520 ILCS 10/5.5)

8 Sec. 5.5. Incidental taking.

9 (a) The Department may authorize, under prescribed terms  
10 and conditions, any taking otherwise prohibited by Section 3 if  
11 that taking is incidental to, and not the purpose of, the  
12 carrying out of an otherwise lawful activity. No taking under  
13 this Section shall be authorized by the Department unless the  
14 applicant submits to the Department a conservation plan.

15 (b) The conservation plan shall include but not be limited  
16 to the following:

17 (1) a description of the impact that the proposed  
18 taking is likely to have on one or more species on the  
19 Illinois list;

20 (2) the steps the applicant or other parties will take  
21 to minimize and mitigate that impact and the funding that  
22 will be available to implement those steps, including but  
23 not limited to bonds, insurance, or escrow;

1           (3) what alternative actions to the taking the  
2 applicant considered and the reasons why those  
3 alternatives will not be used;

4           (4) data and information to assure that the proposed  
5 taking will not reduce the likelihood of the survival or  
6 recovery of the endangered species or threatened species in  
7 the wild within the State of Illinois, the biotic community  
8 of which the species is a part, or the habitat essential to  
9 the species' existence in Illinois;

10          (5) an implementing agreement that specifically names,  
11 and describes the obligations and responsibilities of, all  
12 the parties that will be involved in the taking as  
13 authorized by the permit; and

14          (6) any other measures that the Department may require  
15 as being necessary or appropriate for purposes of the plan.

16          (c) After reviewing the application for incidental taking  
17 and the conservation plan, the Department may authorize the  
18 incidental taking if the Department finds, in a written  
19 decision explaining its conclusions, that the taking will meet  
20 all of the following requirements:

21           (1) the taking will not be the purpose of, but will be  
22 only incidental to, the carrying out of an otherwise lawful  
23 activity;

24           (2) the parties to the conservation plan will, to the  
25 maximum extent practicable, minimize and mitigate the  
26 impact caused by the taking;

1 (3) the parties to the conservation plan will ensure  
2 that adequate funding for the conservation plan will be  
3 provided;

4 (4) based on the best available scientific data, the  
5 Department has determined that the taking will not reduce  
6 the likelihood of the survival or recovery of the  
7 endangered species or threatened species in the wild within  
8 the State of Illinois, the biotic community of which the  
9 species is a part, or the habitat essential to the species'  
10 existence in Illinois;

11 (5) any measures required under paragraph (6) of  
12 subsection (b) of this Section will be performed; and

13 (6) the public has received notice of the application  
14 and has had the opportunity to comment before the  
15 Department made any decision regarding the application.

16 (d) The Department may require that a party to the  
17 conservation plan make additional assurances that the  
18 requirements under items (b)(1) through (b)(6) of this Section  
19 will be met before authorizing incidental taking.

20 (e) The Department shall impose on the authorization for  
21 incidental taking any terms or conditions that the Department  
22 finds necessary to ensure that the requirements under items  
23 (b)(1) through (b)(6) of this Section will be met. These terms  
24 or conditions may include but are not limited to reporting or  
25 monitoring requirements.

26 (f) (Blank). ~~If an applicant is party to a Habitat~~

1 ~~Conservation Plan approved by the U.S. Fish and Wildlife~~  
2 ~~Service pursuant to Section 10 of the Endangered Species Act of~~  
3 ~~1973, P.L. 93-205, and amendments thereto, the Department may~~  
4 ~~authorize taking that is incidental to the carrying out of an~~  
5 ~~otherwise lawful activity. Authorization shall be issued only~~  
6 ~~if the provisions of the Habitat Conservation Plan are found to~~  
7 ~~meet the requirements set forth in subsection (c) of this~~  
8 ~~Section.~~

9 (g) If an applicant has been authorized to take an  
10 endangered or threatened species under the terms of a  
11 biological opinion issued by the U.S. Fish and Wildlife Service  
12 pursuant to Section 7 of the Endangered Species Act of 1973,  
13 P.L. 93-205, and amendments thereto or regulations  
14 implementing Section 7 (50 CFR Part 402), the Department may  
15 authorize taking that is incidental to the carrying out of an  
16 otherwise lawful activity. Authorization shall be issued only  
17 if the Department finds that the taking will not reduce the  
18 likelihood of the survival or recovery of the endangered  
19 species or threatened species in the wild within the State of  
20 Illinois, the biotic community of which the species is a part,  
21 or the habitat essential to the species' existence in Illinois.  
22 (Source: P.A. 91-556, eff. 1-1-00.)

23 (520 ILCS 10/5.6 new)

24 Sec. 5.6. Federal conservation agreements. A permit for  
25 incidental taking under Section 5.5 of this Act shall not be

1 required if a federal conservation agreement, including, but  
2 not limited to, a candidate conservation agreement, habit  
3 conservation plan, or safe harbor agreement, is in effect and  
4 approved by the United States Fish and Wildlife Service under  
5 Section 10 of the federal Endangered Species Act of 1973.

6 (520 ILCS 10/6) (from Ch. 8, par. 336)

7 Sec. 6. There is created the Endangered Species Protection  
8 Board whose duties include listing, delisting, or change of  
9 listing status of species for the Illinois List, in  
10 consultation with and written approval by the Department, in  
11 accordance with the Illinois Administrative Procedure Act, on  
12 rules for listing species of animals or plants as endangered or  
13 threatened and delisting species of animals or plants as  
14 endangered or threatened, or changing their status.

15 The Board shall also advise the Department on methods of  
16 assistance, protection, conservation and management of  
17 endangered and threatened species and their habitats, and on  
18 related matters.

19 The Board shall be composed of 9 persons appointed by the  
20 Governor, and the Director as a non-voting member. Of the 9  
21 appointed members at least 6 shall be persons who are  
22 recognized as naturalists by training, avocation or vocation.  
23 At least two of these shall be zoologists, at least one a  
24 botanist, and at least two ecologists. In making Board  
25 appointments of naturalists, the Governor shall give

1 consideration to recommendations of conservation groups. Of  
2 the remaining appointed members, 2 members shall be landowners  
3 representing the State's largest general farm organization.

4 Initially, 3 members shall be appointed for terms of 3  
5 years, 3 for 2 years and 3 for 1 year. Thereafter, the terms of  
6 all appointive members shall be 3 years. Members shall serve  
7 until their successors are appointed. Any vacancy occurring in  
8 the position of an appointive member shall be filled by the  
9 Governor for the unexpired term.

10 Board meetings shall be called at regular intervals set by  
11 the Board, on the request of the Department, or upon written  
12 notice signed by at least 5 members of the Board, but in no  
13 event less than once quarterly. The place of the meeting shall  
14 be determined at the convenience of the Board and the  
15 Department. A quorum shall consist of 5 appointed members.

16 Members of the Board shall serve without compensation but  
17 shall be reimbursed for actual expenses incurred in the  
18 performance of their duties.

19 The Board may without regard to the Personnel Code, employ  
20 and fix the compensation of necessary staff.

21 The Board shall select from its membership a chairman and  
22 such other officers as it considers necessary, and may name an  
23 Executive Committee to which it may grant specific powers.

24 The Board shall review and revise the Illinois List as  
25 warranted but in no case less frequently than every 5 years. It  
26 shall prepare and make available a report of its

1 accomplishments biennially.

2 (Source: P.A. 84-1065.)

3 (520 ILCS 10/7) (from Ch. 8, par. 337)

4 Sec. 7. Any species or subspecies of animal or plant  
5 designated as endangered or threatened by the Secretary of the  
6 Interior of the United States pursuant to the Endangered  
7 Species Act of 1973, P.L. 93-205, as amended, shall be  
8 automatically listed as an endangered or threatened species  
9 under this Act and thereby placed on the Illinois List by the  
10 Board ~~without notice or public hearing~~. The Board may list, as  
11 endangered or threatened, species of animals or plants which  
12 have reproduced in or otherwise significantly used, as in  
13 migration or overwintering, the area which is now the State of  
14 Illinois, if there is scientific evidence that the species  
15 qualify as endangered or threatened as these terms are defined  
16 in this Act. The Board may delist any non-federally-listed  
17 species for which it finds satisfactory scientific evidence  
18 that its wild or natural populations are no longer endangered  
19 or threatened. Listing, delisting or change of listing status  
20 shall be made only after a public hearing.

21 Notice of such hearing shall be published at least 7 days  
22 before the hearing in a newspaper of general circulation  
23 throughout the state and shall be mailed to any person who has,  
24 in writing requested such notice from the agency holding the  
25 hearing. All persons heard or represented at a hearing and all



1 persons who requested from the responsible agency notice of  
2 such hearing, shall be given a written summary of any action  
3 taken by the Board or Department relative to the hearing  
4 subject.

5       Upon listing or delisting or change of listing status by  
6 the Board, the Director shall file a certified copy of the  
7 names of the species so listed, delisted or changed with the  
8 Secretary of State as provided in "The Illinois Administrative  
9 Procedure Act", approved September 22, 1975, as amended.

10 (Source: P.A. 84-1065.)

11       Section 99. Effective date. This Act takes effect upon  
12 becoming law.