



Sen. Laura Ellman

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1 AMENDMENT TO SENATE BILL 771

2 AMENDMENT NO. _____. Amend Senate Bill 771 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Wetlands Protection Act.

6 Section 5. Findings and intent. The General Assembly
7 finds:

8 (1) In 1818, Illinois contained an estimated 8.2 million
9 acres of wetlands. Based on the Illinois portion of the
10 National Wetlands Inventory, less than 9% of those original
11 acres of wetlands remain.

12 (2) As a result of the significant loss in wetland
13 acreage, there has been a corresponding loss in the functional
14 values and benefits that wetlands provide.

15 (3) Illinois is bordered by 880 miles of rivers, which are
16 critical to navigation, commerce, recreation, and ecosystem

1 health at home and downstream to the Gulf of Mexico, and the
2 health of Illinois rivers is heavily influenced by the health
3 of the tributaries and small streams that flow into them.

4 (4) In Illinois, 9,894 total miles of streams provide
5 water for surface water intakes, supplying public drinking
6 water systems that rely at least in part on intermittent,
7 ephemeral, or headwater streams.

8 (5) Continued loss of Illinois' wetlands and small streams
9 may deprive the People of the State of some or all of the
10 benefits that they provide, including:

11 (A) reducing flood damages and protecting vulnerable
12 communities by absorbing, storing, and conveying peak
13 flows from storms;

14 (B) improving water quality by serving as
15 sedimentation and filtering basins and as natural
16 biological treatment areas;

17 (C) providing breeding, nesting, foraging, and
18 protective habitat for approximately 40% of the State's
19 threatened and endangered plants and animals, in addition
20 to other forms of fish, wildlife, game, waterfowl, and
21 shorebirds;

22 (D) protecting underground water resources and helping
23 to recharge rivers, streams, and local or regional
24 underground water supplies;

25 (E) serving as recreational areas for hunting,
26 fishing, boating, hiking, bird watching, photography, and

1 other uses;

2 (F) providing open space and aesthetic values,
3 particularly in rapidly developing areas;

4 (G) providing unique educational and research
5 opportunities because of their high diversity of plants
6 and animals, their support for a high incidence of
7 threatened and endangered species, and their function as a
8 natural buffer for rivers, lakes, and streams;

9 (H) supplying nutrients in freshwater food cycles and
10 serving as nursery areas and sanctuaries for young fish;
11 and

12 (I) helping to protect shorelines from the forces of
13 water erosion.

14 (6) Our changing climate and its more extreme and less
15 predictable weather patterns heighten the need for some or all
16 of the benefits that Illinois' wetlands provide, including
17 flood control, coastal resilience, water quality, aquifer
18 recharge, habitat, and maintenance of baseflow to recharge
19 rivers, streams, and local or regional underground water
20 supplies.

21 (7) Illinois historically relied on the federal Clean
22 Water Act's permit program administered by the U.S. Army Corps
23 of Engineers and the U.S. Environmental Protection Agency to
24 prevent harm to aquatic resources from unauthorized discharges
25 of dredge or fill material.

26 (8) After rejection of the 1989 Wetland Delineation Manual

1 and in light of uncertainty about federal protections for some
2 "isolated" wetlands, the General Assembly passed the
3 Interagency Wetland Policy Act of 1989 to protect these
4 wetlands from State agency actions and achieve no net loss of
5 wetlands.

6 (9) Recently, the Supreme Court's decision in Sackett v.
7 EPA rolled back the scope of waters of the United States,
8 thereby removing federal Clean Water Act protections for many
9 waters of the United States, including wetlands that provide
10 significant flood control protections, such as bottomland
11 hardwood forested wetlands that are separated from the
12 Illinois River by levees.

13 (10) It is important for Illinois to adopt protections
14 under State law to reinstate protections lost by rolling back
15 the scope of the federal Clean Water Act.

16 Section 10. Definitions.

17 "Advanced identification site" or "ADID site" means an
18 aquatic site that has been determined to provide biological
19 values by the U.S. Army Corps of Engineers and U.S.
20 Environmental Protection Agency Advanced Identification Study
21 in accordance with 40 CFR Part 230.80 as of the effective date
22 of this Act.

23 "Affected property" means any property upon which a
24 regulated activity is conducted.

25 "Agency" means the Illinois Environmental Protection

1 Agency.

2 "Agricultural land" means land that is used for normal
3 farming or ranching activities that are exempt from regulation
4 under Section 404(f) of the federal Clean Water Act.

5 "Approved county or district" means a county or district
6 with a stormwater program that has been approved under Section
7 55 to issue permits under this Act instead of the Department of
8 Natural Resources.

9 "Approved wetland specialist" means a person who has met
10 the educational, training, and field experience requirements
11 that have been adopted, by rule, under this Act or set forth in
12 an approved county or district code and that assure
13 knowledgeable wetland delineations using the Corps of
14 Engineers Wetland Delineation Manual in a manner that is
15 consistent with subsection (f) of Section 25 of this Act.

16 "Avoidance" means any action that is taken in a manner
17 that will cause a regulated activity not to occur and that is
18 consistent with the federal Clean Water Act 404(b)(1)
19 Guidelines developed by the U.S. Environmental Protection
20 Agency and the U.S. Army Corps of Engineers.

21 "Bog" means a peat-accumulating wetland that has no
22 significant inflows or outflows and that supports acidophilic
23 mosses, particularly sphagnum, resulting in highly acidic
24 conditions.

25 "Bottomland hardwood" means forested riverine floodplain
26 forest, including flatwoods in northeastern Illinois, that are

1 located in the 100-year flood plain of Illinois rivers and
2 streams and that are at least seasonally flooded.

3 "Class I wetland" means a top tier wetland as indicated by
4 type (such as bog, bottomland hardwood forest, or panne),
5 designation (such as Ramsar wetland of international
6 importance), or function (such as threatened or endangered
7 species habitat or important flood protection) consistent with
8 Section 25 of this Act. Class I wetlands do not include waters
9 of the United States.

10 "Class II wetland" means a wetland, including its
11 contiguous area, that is larger than 0.5 acres and is not a
12 Class I wetland. Class II wetlands do not include waters of the
13 United States.

14 "Class III wetland" means a wetland, including its
15 contiguous area, that is 0.5 acres or smaller and is not a
16 Class I wetland. Class III wetlands do not include waters of
17 the United States.

18 "Contiguous area" means the portion of a wetland that
19 extends beyond the property boundary of the affected property.

20 "Corps of Engineers" means the U.S. Army Corps of
21 Engineers.

22 "Corps of Engineers Wetlands Delineation Manual" means the
23 1987 U.S. Army Corps of Engineers, Wetlands Delineation
24 Manual, Research Program Technical Report Y-87-1, and any
25 applicable Regional Supplements thereto.

26 "Cypress swamp" means forested, permanent, or

1 semi-permanent bodies of water, with species assemblages
2 characteristic of the Gulf of Mexico and Southeastern Coastal
3 Plains and including bald cypress, which are found in extreme
4 southern Illinois.

5 "Department" means the Department of Natural Resources.

6 "Director" means the Director of Natural Resources.

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

9 "General permit" means a permit issued by the approved
10 county, district, or the Department in a manner that is
11 consistent with Section 40 of this Act and that pre-authorizes
12 a category of activities that are similar in nature and impact
13 on water quality, will have only minimal adverse effects when
14 performed separately, will have minimal cumulative impacts on
15 water quality provided the permittee complies with all of the
16 conditions of the general permit, and will not cause or
17 contribute to a violation of State water quality standards.

18 "General permit" includes a U.S. Army Corps of Engineers
19 nationwide permit.

20 "High-Quality Aquatic Resources" or "HQAR" means
21 high-quality aquatic resources consistent with the guidelines
22 of the Chicago District of the U.S. Army Corps of Engineers or
23 approved county or district codes.

24 "Individual permit" means a permit issued by the
25 Department under Section 30 of this Act after case-specific
26 sequenced review (avoidance, minimization, mitigation) of the

1 proposed project and certification of compliance with State
2 water quality standards.

3 "In lieu fee mitigation" means a payment to an approved in
4 lieu fee program made by a permittee to satisfy a mitigation
5 requirement in accordance with this Act and implementing
6 rules.

7 "Maintenance" means work to repair and keep in good
8 working order existing structures in wetlands, including
9 emergency reconstruction of recently damaged parts of
10 currently serviceable structures, including dikes, dams,
11 levees, groins, riprap, breakwaters, causeways, and bridge
12 abutments or approaches, and transportation structures.
13 "Maintenance" does not include any modification that changes
14 the character, scope, or size of the original fill design but
15 such a modification may be eligible to use Nationwide Permit
16 3, Maintenance.

17 "Metropolitan Water Reclamation District" or "district"
18 means a district organized under the Metropolitan Water
19 Reclamation District Act.

20 "Minimization" means reducing, as much as practicable, the
21 adverse environmental impact of an unavoidable regulated
22 activity in a manner that is consistent with this Act and the
23 federal Clean Water Act 404(b)(1) Guidelines developed by the
24 U.S. Environmental Protection Agency and the U.S. Army Corps
25 of Engineers.

26 "Mitigation" means the restoration, establishment,

1 enhancement, or protection and maintenance of wetlands and
2 other aquatic resources for the purpose of compensating for
3 unavoidable adverse impacts that remain after all appropriate
4 and practicable avoidance and minimization have been achieved.
5 Mitigation must be consistent with the requirements of this
6 Act. Mitigation may include wetlands creation if authorized by
7 the Department in situations in which other mitigation is
8 impractical and the likelihood of success is high. Wetland
9 creation is restricted to areas that are currently
10 non-wetlands.

11 "Mitigation bank" means a site, or suite of sites, where
12 aquatic resources, such as wetlands, streams, wetland buffers,
13 and riparian areas, are restored, established, enhanced, or
14 preserved for the purpose of providing compensatory mitigation
15 for impacts authorized by permits under this Act. A mitigation
16 bank may be approved to provide mitigation for impacts to
17 wetlands that have been approved by the Corps of Engineers
18 under Section 404 of the federal Clean Water Act, for impacts
19 to wetlands under the Illinois Interagency Wetlands Policy Act
20 of 1989, or for both. A mitigation bank must be approved by the
21 Department in accordance with this Act and implementing rules;
22 by an approved county; or by the Corps of Engineers in
23 accordance with the process established in 33 CFR 332.8 and 40
24 CFR 230.98.

25 "Nationwide permit" means a nationwide permit issued by
26 the U.S. Army Corps of Engineers as of the effective date of

1 this Act.

2 "Panne" means wet interdunal flats located near Lake
3 Michigan. "Panne" includes dune and swale wetlands.

4 "Permit" means a written authorization issued by the
5 Department of Natural Resources under this Act and
6 implementing rules. "Permit" includes general permits and
7 individual permits.

8 "Person" means an individual, partnership, co-partnership,
9 firm, company, limited liability company, corporation,
10 association, joint-stock company, trust, estate, political
11 subdivision, state or federal agency or other legal entity, or
12 its legal representative, employee, agent or assigns.

13 "Predischarge notification" means notice that a permittee
14 must provide the Department before undertaking an activity
15 authorized by a general permit.

16 "Prior converted cropland" means a wetland that was
17 converted to agricultural use before December 23, 1985, that
18 had an agricultural commodity produced on it at least once
19 before December 23, 1985, that remains available for
20 agricultural commodity production, and that, as of December
21 23, 1985, did not support woody vegetation and met the
22 following hydrologic criteria for a farmed wetland: (i)
23 inundation was less than 15 consecutive days during the
24 growing season or 10% of the growing season, whichever is
25 less, in most years (50% chance or more); and (ii) if a
26 pothole, ponding was less than 7 consecutive days during the

1 growing season in most years (50% chance or more) and
2 saturation was less than 14 consecutive days during the
3 growing season most years (50% chance or more). However, if
4 the prior converted cropland is changed out of agricultural
5 use (including conservation) and the area regains wetland
6 attributes, the area may become subject to this Act under
7 Section 15.

8 "Regulated activity" means the discharge of dredged or
9 fill material into a wetland subject to this Act.

10 "Threatened or endangered species" means those species
11 that have been designated as threatened or endangered under
12 the Illinois Endangered Species Protection Act and those
13 species that have been listed as threatened or endangered
14 under the federal Endangered Species Act.

15 "Upland" means non-wetland, dry land.

16 "Voluntary aquatic habitat restoration project" means
17 activities that are voluntarily undertaken (not as required
18 mitigation) to restore, reestablish, rehabilitate, or enhance
19 altered, degraded, or former aquatic habitats that result in a
20 net increase in aquatic habitat functions and services
21 consistent with historic, pre-disturbance functions and
22 services of the aquatic habitat.

23 "Wetlands" means those areas that are inundated or
24 saturated by surface or ground water at a frequency or
25 duration sufficient to support, and that under normal
26 circumstances do support, a prevalence of vegetation typically

1 adapted for life in saturated soil conditions.

2 Section 15. Exemptions.

3 (a) Consistent with Section 404(f) of the federal Clean
4 Water Act, as long as they do not have as their purpose
5 bringing a wetland into a use to which it was not previously
6 subject and do not entail discharge of toxic pollutants, the
7 following activities are not prohibited by or otherwise
8 subject to regulation under this Act:

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

14 (2) Maintenance, including emergency reconstruction of
15 recently damaged parts, of currently serviceable
16 structures, such as dikes, dams, levees, groins, riprap,
17 breakwaters, causeways, bridge abutments or approaches,
18 and transportation structures. Maintenance does not
19 include any modification that changes the character,
20 scope, or size of the original fill design. Emergency
21 reconstruction must occur within a reasonable period of
22 time after damage occurs in order to qualify for this
23 exemption.

24 (3) Construction or maintenance of farm or stock ponds
25 or irrigation ditches, or the maintenance (but not

1 construction) of drainage ditches. Discharge associated
2 with siphons, pumps, headgates, wingwalls, weirs,
3 diversion structures, and such other facilities as are
4 appurtenant and functionally related to irrigation and
5 ditches are included in this definition.

6 (4) Construction of temporary sedimentation basins on
7 a construction site which does not include any regulated
8 activities within a wetland. As used in this paragraph,
9 the term "construction site" means any site involving the
10 erection of buildings, roads, and other discrete
11 structures and the installation of support facilities
12 necessary for construction and utilization of such
13 structures. "Construction site" also includes any other
14 land areas which involve land-disturbing excavation
15 activities, including quarrying or other mining
16 activities, where an increase in the runoff of sediment is
17 controlled through the use of temporary sedimentation
18 basins.

19 (5) Construction or maintenance of farm roads or
20 forest roads or temporary roads for moving mining
21 equipment, where such roads are constructed and
22 maintained, in accordance with best management practices,
23 to assure that flow and circulation patterns and chemical
24 and biological characteristics of the wetland are not
25 impaired, that the reach of the wetland is not reduced,
26 and that any adverse effect on the aquatic environment

1 will be otherwise minimized.

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

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

16 (c) The following are not jurisdictional wetlands for
17 purposes of this Act:

18 (1) Waste treatment systems, including treatment ponds
19 or lagoons designed to meet the requirements of the
20 federal Clean Water Act and comply with State water
21 quality standards.

22 (2) Prior converted cropland unless there has been a
23 change in use out of agricultural or conservation use and
24 the area regains wetland attributes.

25 (3) Ditches (including roadside ditches) excavated
26 wholly in and draining only dry land and that do not carry

1 a relatively permanent flow of water.

2 (4) An artificially irrigated area that would revert
3 to upland if the irrigation ceased. This shall also
4 include the pumping of water for purposes of waterfowl
5 hunting or creating waterfowl habitat.

6 (5) An artificial lake or pond created by excavating
7 or diking upland to collect and retain water and which are
8 used exclusively for such purposes as stock watering,
9 irrigation, settling basins, or ricegrowing.

10 (6) Artificial reflecting or swimming pools or other
11 small ornamental bodies of water created by excavating or
12 diking dry land to retain water for primarily aesthetic
13 reasons.

14 (7) A water-filled depression created in dry land
15 incidental to construction activity and pits excavated in
16 dry land for the purpose of obtaining fill, sand, or
17 gravel unless and until the construction or excavation
18 operation is abandoned and the resulting waterbody meets
19 the definition of "waters of the State" consistent with
20 the Environmental Protection Act, including Section 3.550
21 of the Environmental Protection Act.

22 (8) Swales and erosional features, including gullies,
23 rills, and small washes, characterized by low volume,
24 infrequent, or short duration flow.

25 (9) Wetlands created by the construction of stormwater
26 facilities in upland areas, provided that the facility was

1 not created for the purpose of wetland mitigation.

2 (d) Any activity covered by the Interagency Wetland Policy
3 Act of 1989 is exempt from the provisions of this Act. This
4 subsection (d) applies only if the applicable governmental
5 entity is in compliance with the Interagency Wetland Policy
6 Act of 1989.

7 Section 20. Applicability. The requirements of this Act
8 apply to all wetlands as that term is defined in this Act. If a
9 wetland ceases to meet that definition because it becomes
10 subject to regulation under the federal Clean Water Act, it
11 shall no longer be subject to the provisions of this Act. The
12 Department may enter into an agreement with the Corps of
13 Engineers to coordinate the permit program under this Act with
14 the Corps of Engineers permit program under Section 404 of the
15 federal Clean Water Act.

16 Section 25. Regulated activities; individual and general
17 permits; wetland classification; mitigation; delineation.

18 (a) No person may discharge dredged or fill material into
19 a wetland protected by this Act except in accordance with the
20 terms of an individual or general permit issued by the
21 Department under this Section or Section 40 of this Act.

22 (b) Wetlands shall be classified as follows:

23 (1) The Department shall classify a wetland as Class I
24 if the wetland:

1 (A) is or encompasses a bog, bottomland hardwood
2 forest, fen, panne, or cypress swamp;

3 (B) has been designated a Ramsar wetland of
4 international importance under the Convention on
5 Wetlands;

6 (C) is designated for important flood protection
7 services under paragraph (3);

8 (D) is habitat for a threatened or endangered
9 species listed under State or federal law;

10 (E) has a Floristic Quality Index that is equal to
11 or greater than 20 or a mean coefficient of
12 conservatism (Mean C) equal to or greater than 3.5,
13 determined in accordance with rules adopted by the
14 Department;

15 (F) is or encompasses an ADID site; or

16 (G) is a High-Quality Aquatic Resource.

17 (2) The Department shall classify a non-Class I
18 wetland as a Class II wetland if the wetland, including
19 its contiguous area, is larger than 0.5 acres. However, if
20 a non-Class I wetland is smaller than 0.5 acres it shall be
21 designated a Class III wetland.

22 (3) The Department may, in consultation with the
23 Illinois Emergency Management Agency and Office of
24 Homeland Security, the Federal Emergency Management Agency
25 or local authorities, designate a wetland as a Class I
26 wetland due to important flood protection services

1 protecting human life and property if the wetland is no
2 longer protected under the federal Clean Water Act. In
3 addition, an approved county or district under Section 55
4 may designate high function wetlands as Class I wetlands
5 through a process similar to Lake County's Wetland
6 Restoration and Preservation Plan.

7 (c) Mitigation shall be required for all regulated
8 activities regardless of the type of permit and shall be
9 conducted according to the following preferred order:

10 (1) Discharges impacting Class I wetlands shall be
11 mitigated through either on-site mitigation or off-site
12 mitigation at an approved wetland mitigation bank within
13 the same watershed as the location of the proposed fill.
14 Mitigation shall be in kind, restoring to the maximum
15 degree practicable as determined by the Department, both
16 the type and functions of the wetland that will be
17 affected by the regulated activity. The mitigation ratio
18 shall be 5:1 unless the Director, for good cause shown and
19 on a case-by-case basis, authorizes a higher mitigation
20 ratio not to exceed 6:1 or a lower mitigation ratio not
21 less than 4:1. The in lieu fee option may be used for
22 mitigation when there are no available mitigation credits
23 within the watershed.

24 (2) Discharges impacting Class II wetlands shall be
25 mitigated through either on-site mitigation or off-site
26 mitigation at an approved wetland mitigation bank within

1 the same watershed as the location of the proposed fill.
2 Mitigation shall be in kind, restoring to the maximum
3 degree practicable as determined by the Department, both
4 the type and functions of the wetland that will be
5 affected by the regulated activity. The mitigation ratio
6 shall be 3:1 unless the Director, for good cause shown and
7 on a case-by-case basis, authorizes a higher mitigation
8 ratio not to exceed 3.5:1 or a lower mitigation ratio not
9 less than 2.5:1. The in lieu fee option may be used for
10 mitigation when there are no available mitigation credits
11 within the watershed.

12 (3) Discharges impacting Class III wetlands shall be
13 mitigated through either participation in an approved
14 wetland mitigation bank or an approved in-lieu fee
15 program, unless the Department for good cause objects. The
16 mitigation ratio shall be 1.5:1 for compensation through
17 an approved wetland mitigation bank and 2:1 for
18 compensation through an approved in-lieu fee program. The
19 Director, for good cause shown and on a case-by-case
20 basis, may authorize a higher or lower mitigation ratio.

21 (d) Individuals seeking a permit are responsible for
22 wetland delineation and classification made by or under the
23 supervision of an approved wetland specialist. Wetland
24 delineations shall be made in accordance with the Corps of
25 Engineers Wetland Delineation Manual. Classifications shall be
26 in accordance with this Section or an approved program under

1 Section 55. Delineations by the Corps of Engineers, by
2 approved counties, or by Corps of Engineers approved agencies
3 shall be honored.

4 (e) Individuals seeking an individual permit shall provide
5 the Department with a complete application, including, at a
6 minimum (i) a map of the area that will be affected by the
7 activity, including wetland and water boundaries for the areas
8 affected and the existing uses and structures; (ii) a wetland
9 delineation made in accordance with the Corps of Engineers
10 Wetland Delineation Manual by or under the supervision of an
11 approved wetland specialist and this Section; (iii) a
12 description of the proposed activity, including its purpose,
13 the location and dimensions of any structures, grading or
14 fills, drainage, roads, sewers and water supply, parking lots,
15 stormwater facilities, discharge of pollutants and on-site
16 waste disposal; (iv) a description of any public benefit to be
17 derived from the proposed project; and (v) the names and
18 addresses of adjacent landowners as determined by the current
19 tax assessment rolls. The Department shall notify the
20 applicant within 20 business days if the permit application is
21 incomplete and provide a reasonable time for the applicant to
22 correct deficiencies in the permit application. Within 90
23 business days of receipt of a complete permit application, the
24 Department shall either issue the permit, deny the permit, or
25 issue the permit with conditions. All individual permit
26 decisions are subject to public comment. If a public hearing

1 is held, the deadline to make a permit determination is
2 extended by 45 business days.

3 (f) The Department shall evaluate individual permit
4 requests through the following sequence: (i) avoidance of
5 impacts to aquatic resources if a less environmentally
6 damaging practicable alternative exists; (ii) minimization of
7 unavoidable impacts by taking appropriate and practicable
8 steps such as reduction of the footprint of the fill; (iii)
9 compensatory mitigation for any remaining impacts to aquatic
10 resources in accordance with this Act. The Department shall
11 not issue an individual permit pursuant to this Section unless
12 the Agency has certified that the proposed activity will not
13 cause or contribute to a violation of a State water quality
14 standard. The Agency shall, within 80 business days of receipt
15 of a complete application, approve, deny, or approve with
16 conditions the water quality certification. The applicant for
17 a permit may waive the requirement that the Agency must take
18 final action on the water quality certification under this
19 paragraph within 80 days after the filing of the application.

20 (g) Upon request by an applicant, the Department may issue
21 an after-the-fact permit if it determines that the activities
22 covered by the after-the-fact permit were undertaken and
23 conducted in response to emergency circumstances that
24 constituted an imminent threat to persons, public
25 infrastructure, personal property, or uninterrupted utility
26 service. The request for an after-the-fact permit must be made

1 as soon as reasonably possible after the event. The Department
2 shall require compensatory mitigation.

3 Section 30. General permits.

4 (a) Notwithstanding Section 25, any person who intends to
5 conduct a regulated activity within the State may do so in
6 accordance with a general permit issued by the Department
7 under this Section.

8 (b) Permits for all categories of activities, subject to
9 the same permit limitations and conditions, that are the
10 subject of a nationwide permit issued by the Corps of
11 Engineers, in effect on the date of the enactment of this Act,
12 are adopted as general permits covering regulated activities
13 subject to this Act. Notwithstanding the foregoing, all such
14 permits will include a pre-discharge notification requirement
15 and compensatory mitigation, unless the permit states
16 compensatory mitigation is not required because the work is
17 designed to improve water quality. In any case, compensatory
18 mitigation is not required for impacts below 1/10 of an acre.

19 (c) The Department may adopt general permits, through
20 public notice and comment rulemaking in accordance with the
21 Illinois Administrative Procedure Act covering other
22 activities that would be subject to the same permit
23 limitations and conditions, if it determines that the
24 activities in such a category will cause only minimal adverse
25 environmental effects when performed separately, will have

1 only minimal cumulative adverse effect on the environment,
2 will not cause or contribute to a violation of State water
3 quality standards when performed separately, and will have
4 only a minimal cumulative adverse effect on water quality. The
5 Department shall prescribe best management practices for any
6 general permit issued under this Section. The Department shall
7 include compensatory mitigation requirements in general
8 permits for impacts that exceed 1/10 of an acre.

9 (d) The Department shall adopt a general permit for:

10 (1) construction or maintenance of access roads for
11 utility lines, substations, or related equipment or
12 facilities with adequate culverts, bridges, or other
13 structures to provide freshwater connectivity and passage
14 for fish or other aquatic life;

15 (2) activities for the purpose of preserving and
16 enhancing aviation safety or to prevent an airport hazard;
17 and

18 (3) conservation activities, such as voluntary aquatic
19 habitat restoration and fish passage.

20 The Department shall develop the general permit under
21 paragraph (3) in consultation with local, state, and federal
22 resource agencies, such as the U.S. Fish and Wildlife Service,
23 and qualified non-profit organizations engaged in aquatic
24 habitat restoration as a central part of their mission.

25 (e) No general permit adopted under subsection (b), (c),
26 or (d) of this Section shall be for a period of more than 5

1 years after the date of its adoption, and the Department shall
2 revoke or modify such a general permit, after opportunity for
3 public hearing, if the Department determines that the
4 activities authorized by the general permit have an adverse
5 impact on the environment, cause or contribute to a violation
6 of State water quality standards, or are more appropriately
7 authorized by individual permits.

8 (f) Compliance with the terms of a general permit shall be
9 deemed compliance with the provisions of this Act if the
10 applicant:

11 (1) files a predischARGE notification in accordance
12 with regulations adopted under this Act;

13 (2) files all reports required by the general permit;

14 (3) complies with all limitations required by the
15 general permit; and

16 (4) complies with compensatory mitigation
17 requirements.

18 (g) The Department may respond to a predischARGE
19 notification issued under this Section within 30 days after
20 the Department receives the notice.

21 Section 35. In lieu fee program and mitigation banking.

22 (a) The following entities may establish and operate a
23 mitigation bank or in lieu fee program consistent with this
24 Act and rules implementing this Act:

25 (1) State agencies;

1 (2) qualified for-profit and non-profit entities; and

2 (3) units of local government, including, but not
3 limited to, counties, the Metropolitan Water Reclamation
4 District of Greater Chicago (MWRD), soil and water
5 conservation districts, and county forest districts.

6 (b) Mitigation banks may be established on public or
7 private lands and must be located on sites that possess the
8 physical, chemical, and biological characteristics to support
9 establishment of the desired aquatic resources and functions,
10 such as wetland hydrology.

11 (c) The requirements for mitigation banks shall include a
12 mitigation bank instrument, long-term management and
13 protection, monitoring requirements, remedial action
14 procedures, reporting requirements, and financial assurances,
15 such as performance bonds.

16 (d) In lieu fee programs must include an agreement between
17 the in lieu fee sponsor that is similar to a mitigation bank
18 instrument, a time-table, such as a requirement to use funds
19 to design and implement restoration projects within 3 years;
20 accounting requirements, including, but not limited to,
21 watershed-based accounting; monitoring requirements;
22 reporting requirements; and financial assurances. Any agency
23 in lieu fee program must have provisions that protect the
24 integrity of the fund and prevent this funding from being
25 reassigned to other uses.

1 Section 40. Rulemaking and reporting.

2 (a) The Department shall:

3 (1) adopt rules to implement Sections 25 and 30 of
4 this Act within one year after the effective date of this
5 Act, including

6 (A) rules for the review, issuance, denial, or
7 issuance with conditions of individual permits; and

8 (B) rules to promulgate, revise, or revoke general
9 permits;

10 (2) adopt rules to administer and prioritize use of
11 funding from the Wetlands Protection Fund under Section 60
12 of this Act;

13 (3) adopt rules to approve mitigation banks and in
14 lieu fee programs under Section 35 of this Act, including:

15 (A) criteria that an applicant to operate a
16 mitigation or in lieu fee program under Section 35 of
17 this Act shall meet and that are at least as stringent
18 as the U.S. Army Corps of Engineers requirements set
19 out in 33 CFR Part 332;

20 (B) priority for mitigation banks and in lieu fee
21 programs that restore previously existing wetlands and
22 small streams; and

23 (C) surety provisions for mitigation banks and in
24 lieu fee programs;

25 (4) adopt rules within one year after the effective
26 date of this Act to establish the procedures under which a

1 governmental body with a stormwater management program
2 under Section 5-1062 of the Counties Code or under Section
3 7h of the Metropolitan Water Reclamation District Act
4 shall be recognized to have met the conditions of
5 subsection (b) of Section 55 of this Act;

6 (5) adopt rules for approval of wetland delineators
7 consistent with subsection (f) of Section 25 of this Act,
8 including recognition of existing county, district, or
9 U.S. Army Corps of Engineers wetland delineator training
10 programs, approval programs, or both; and

11 (6) adopt any other rules necessary to implement and
12 administer this Act.

13 (b) The Department may provide by rule for any
14 requirements regarding bonds or letters of credit in favor of
15 the State, including conditions sufficient to secure
16 compliance with conditions and limitations of a permit.

17 (c) The Department may consult with the Illinois Water
18 Plan Task Force.

19 (d) Subject to appropriations, the Department shall do all
20 of the following:

21 (1) provide a report to the Governor and the Illinois
22 General Assembly regarding implementation of this Act and
23 recommendations, including legislative proposals, to
24 enhance the effectiveness of this Act;

25 (2) provide recommendations to harmonize these
26 wetlands protections with the Illinois Interagency

1 Wetlands Policy Act of 1989; and

2 (3) study the impact of federal rollback of protection
3 for waters beyond wetlands, such as ephemeral streams, in
4 Illinois and provide recommendations, including possible
5 legislative proposals, to protect the citizens of Illinois
6 and waters of the State.

7 Section 45. Appeal of final Department decisions; judicial
8 review.

9 (a) Any permit applicant who has been denied a permit in
10 whole or in part, and any person who participated in the permit
11 proceeding and who is aggrieved by a decision of the
12 Department to grant a permit in whole or in part, may appeal
13 the decision to the Director within 60 calendar days of the
14 date the permit is granted or denied. In all such appeals, the
15 burden of persuasion shall be on the party appealing the
16 Department's decision.

17 (b) A person aggrieved by a final decision made under this
18 Act, including parties that have participated in the permit
19 process if a permit was granted, may seek judicial review of
20 the decision under the Administrative Review Law.

21 Section 50. Investigation; enforcement.

22 (a) In accordance with constitutional limitations, the
23 Department shall have authority to enter at all reasonable
24 times upon any private or public property for the purpose of

1 inspecting and investigating to ascertain compliance and
2 possible violations of this Act, implementing rules, or permit
3 terms or conditions.

4 (b) The civil penalties provided for in this Section may
5 be recovered in a civil action that may be instituted in a
6 court of competent jurisdiction. The State's Attorney of the
7 county in which the alleged violation occurred, or the
8 Attorney General may, at the request of the Department or on
9 the State's Attorney's or Attorney General's own motion,
10 institute a civil action in a court of competent jurisdiction
11 to recover civil penalties and to obtain an injunction to
12 restrain violations of this Act and to compel compliance with
13 this Act.

14 (c) Any person who violates any provision of this Act, any
15 rule adopted under this Act, any permit issued under this Act,
16 or any term or condition of a permit issued under this Act
17 shall be liable for a civil penalty not to exceed \$10,000 per
18 day of violation. Any such penalty shall be made payable to the
19 Wetlands Protection Fund and shall be deposited into that Fund
20 as provided in Section 60. In assessing a penalty, courts may
21 consider any matters of record including:

- 22 (1) the duration and gravity of the violation;
- 23 (2) the presence or absence of due diligence on the
24 part of the violator in attempting to comply with the Act;
- 25 (3) any economic benefits accrued by the violator
26 through the violation;

1 (4) the likely deterrence effect of the penalty; and

2 (5) any history on the part of the violator of past
3 violations of this Act.

4 (d) Violations of this Act, rules adopted under this Act,
5 or permits issued under this Act shall not be deemed criminal
6 offenses.

7 (e) All final orders imposing civil penalties under this
8 Section shall prescribe the deadline for payment. If such a
9 penalty is not paid within the time prescribed, interest on
10 the penalty shall be charged at the rate set forth in
11 subsection (a) of Section 1003 of the Illinois Income Tax Act
12 unless the deadline for payment is stayed by a court pending
13 appeal.

14 (f) The Department may terminate a permit if the permittee
15 violated the terms or conditions of the permit, obtained the
16 permit by misrepresentation, or failed to disclose relevant
17 facts.

18 (g) The Attorney General or State's Attorney of the county
19 where the affected wetland is located, may, upon his or her own
20 motion or upon request of the Department, institute a civil
21 action in circuit court for an injunction or other appropriate
22 legal action to restrain a violation of this Act. In the
23 proceeding, the court shall determine whether a violation of
24 this Act has been committed or is likely to occur, and shall
25 enter any order it considers necessary to remove the effects
26 of the violation and to prevent the violation from occurring,

1 continuing or being renewed in the future. An order may
2 include a requirement that the violator restore the affected
3 wetland area, including a provision that, if the violator does
4 not comply by restoring the wetland within a reasonable time,
5 the Department may restore the wetland to its condition prior
6 to the violation and the violator shall be liable to the
7 Department for the cost of the restoration. However, the
8 Department retains the right to act to remedy emergency
9 situations, such as threats to public safety, and the violator
10 shall be liable to the Department for the cost of the
11 restoration.

12 (h) Any person, other than the Attorney General or the
13 State's Attorney, may file a complaint with the Illinois
14 Pollution Control Board against any person allegedly violating
15 this Act, any rule adopted under this Act, any permit issued
16 under this Act, or any term or condition of a permit issued
17 under this Act, or any relevant Board order. The Board shall
18 have authority to conduct proceedings upon complaints charging
19 such violations of this Act.

20 (i) Any penalty assessed under this Act, including costs
21 of wetland restoration and any restoration requirement, shall
22 be recorded by the clerk of the court as a lien against the
23 property and shall not be removed until the penalty is paid or
24 the restoration is completed.

25 (j) All costs, fees, and expenses in connection with an
26 enforcement or restoration action shall be assessed as damages

1 against the violator.

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

4 Section 55. County and District authority.

5 (a) Nothing in this Act preempts or denies the right of any
6 governmental body with a stormwater management program under
7 Section 5-1062 of the Counties Code or a district with a
8 stormwater program under Section 7h of the Metropolitan Water
9 Reclamation District Act from controlling or regulating
10 activities in any wetlands within the jurisdiction of the
11 governmental body.

12 (b) Upon the request of a governmental body with a
13 stormwater management program under Section 5-1062 of the
14 Counties Code or under Section 7h of the Metropolitan Water
15 Reclamation District Act, the Director shall, within 30
16 calendar days of receiving the written request or, in the case
17 of subsection (c), within 30 calendar days after the effective
18 date of this Act, provide a letter of recognition delegating
19 permitting authority under this Act to the county or district
20 stormwater program. Subject to subsection (c), the letter of
21 recognition shall be provided if the governmental body's
22 stormwater management program:

23 (1) provides wetlands protections that are consistent
24 with the scope and intent of this Act and that are at least
25 as stringent as those in this Act;

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

4 (3) is implementing and enforcing its stormwater
5 management program.

6 (c) Activities within or affecting wetlands that occur
7 within the jurisdiction of a governmental body with a
8 stormwater management program under Section 5-1062 of the
9 Counties Code or under Section 7h of the Metropolitan Water
10 Reclamation District Act and that meet the requirements of
11 paragraphs (1), (2), and (3) of subsection (b) of this Section
12 are deemed to be in compliance with the requirements of this
13 Act, but must meet those county or district stormwater
14 management requirements, at a minimum. This also applies
15 during the period that the Department is considering a
16 county's request under subsection (b), but the requirements of
17 this Act do apply until the county has requested recognition
18 under subsection (b). Lake, Cook, Kane, McHenry, and DuPage
19 Counties and the Metropolitan Water Reclamation District of
20 Greater Chicago are deemed to have requested recognition as of
21 the effective date of this Act, and their programs are deemed
22 to be sufficient to meet the requirements of paragraph (b) of
23 this Section.

24 (d) The Director may rescind recognition status, or place
25 conditions on recognition status, after notification, a public
26 hearing, and a reasonable opportunity for the county or

1 district to cure the defect, if the defect with regard to
2 subsection (b) is not resolved. However, notwithstanding any
3 other provision of this Section, a county or district
4 delegation will not be revoked or modified if the local
5 program remains at least as stringent as it was on the
6 effective date of this Act.

7 (e) A governmental body with a stormwater management
8 program under Section 5-1062 of the Counties Code or under
9 Section 7h of the Metropolitan Water Reclamation District Act
10 that has obtained recognition by the Director under this
11 Section shall submit an annual report to the Director.

12 (f) Nothing in this Act shall be construed as a limitation
13 or preemption of any home rule power.

14 (g) The Department may provide technical assistance and
15 grant funding under Section 60 to governmental bodies with
16 approved programs under this Section.

17 Section 60. Wetlands Protection Fund.

18 (a) The Wetlands Protection Fund shall be established as a
19 special fund in the State treasury, to be managed by the
20 Department, separate and distinct from the General Revenue
21 Fund. Any interest earned by the Wetlands Protection Fund
22 shall be credited to the Fund. The purpose of the Wetlands
23 Protection Fund is to further wetlands and small streams
24 protection and management. Its purpose is to supplement, not
25 supplant, existing Department resources. The Wetlands

1 Protection Fund may not be used to pay for compensatory
2 mitigation obligations under this Act.

3 (b) Pursuant to Section 50, all penalties collected by the
4 Department under this Act shall be deposited into the Wetlands
5 Protection Fund.

6 (c) The Illinois General Assembly may appropriate
7 additional moneys to the Wetlands Protection Fund to implement
8 this Act.

9 (d) The Department shall use the moneys in the Wetlands
10 Protection Fund to further wetlands and small streams
11 protection and management. Eligible uses of moneys in the Fund
12 include:

13 (1) providing technical assistance and grant funding
14 to counties or districts with approved programs under
15 Section 55 to restore, preserve, enhance, protect, or
16 maintain wetlands, streams, and upland buffers,
17 particularly Class I areas or wetlands, waters, and
18 buffers that provide floodwater storage and flood risk
19 reduction;

20 (2) supplementing other State, local, or private
21 funding for non-compensatory wetlands and small streams
22 restoration, enhancement, preservation and maintenance;

23 (3) providing matching funds for wetland and stream
24 inventories, mapping, watershed planning and wetland
25 program development grants; and

26 (4) covering staffing and administrative costs for the

1 Department to implement this Act.

2 Section 65. Review fee. All inquiries to determine whether
3 or not the proposed activity requires permit authorization by
4 the Department under this Act will be reviewed by the
5 Department free of charge. A permit review fee that is to be
6 set by the Department by rule is required for all permit
7 applications under this Act. The Department shall establish a
8 graduated review fee payment schedule depending on the
9 intensity of required review and the size of the individual
10 project. Accordingly, the highest review fees will be charged
11 for individual permits to authorize major projects. The
12 Department may, by rule, impose a reasonable fee for wetlands
13 delineation and classification.

14 Section 90. The State Finance Act is amended by adding
15 Section 5.1015 as follows:

16 (30 ILCS 105/5.1015 new)

17 Sec. 5.1015. The Wetlands Protection Fund.

18 Section 97. Severability. The provisions of this Act are
19 severable under Section 1.31 of the Statute on Statutes."