

# SB3669



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

SB3669

Introduced 2/9/2024, by Sen. Laura Ellman

#### SYNOPSIS AS INTRODUCED:

New Act  
30 ILCS 105/5.1015 new

Creates the Wetlands and Small Streams Protection Act to restore protections for wetlands and small streams that were formerly protected from pollution and destruction by the Clean Water Act. Provides provisions concerning: exemptions; wetlands delineation, classification, notification, permits and veto; general permits; appeal of final decisions made by the Department of Natural Resources and judicial review; investigation and enforcement; and county authority. Creates the Wetlands and Small Streams Advisory Committee and establishes duties and rules for the Committee. Creates the Wetlands and Small Streams Protection Fund. Provides for permit review fees. Defines terms. Makes conforming changes in the State Finance Act and the Illinois Environmental Protection Act. Effective immediately.

LRB103 36679 MXP 66789 b

A BILL FOR

1 AN ACT concerning transportation.

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

4 Section 1. Short title. This Act may be cited as the  
5 Wetlands and Small Streams 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 the original  
11 acres remain.

12 (2) With the significant loss in acreage, a corresponding  
13 loss in the functional values and benefits that wetlands  
14 provide has occurred.

15 (3) Illinois is bordered by 880 miles of rivers which are  
16 critical to navigation, commerce, recreation, and ecosystem  
17 health at home and downstream to the Gulf of Mexico. The health  
18 of Illinois rivers is heavily influenced by the health of the  
19 tributaries and small streams that flow into them.

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

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

4           (A) reducing flood damages and protecting vulnerable  
5 communities by absorbing, storing, and conveying peak  
6 flows from storms;

7           (B) improving water quality by serving as  
8 sedimentation and filtering basins and as natural  
9 biological treatment areas;

10          (C) providing breeding, nesting, forage, and  
11 protective habitat for approximately 40% of the State's  
12 threatened and endangered plants and animals, in addition  
13 to other forms of fish, wildlife, game, waterfowl, and  
14 shorebirds;

15          (D) protecting underground water resources and helping  
16 to recharge rivers, streams, and local or regional  
17 underground water supplies;

18          (E) serving as recreational areas for hunting,  
19 fishing, boating, hiking, bird watching, photography, and  
20 other uses;

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

23          (G) providing unique educational and research  
24 opportunities because of their high diversity of plants  
25 and animals, their support for a high incidence of  
26 threatened and endangered species, and their function as a

1 natural buffer for rivers, lakes, and streams;

2 (H) supplying nutrients in freshwater food cycles and  
3 serving as nursery areas and sanctuaries for young fish;  
4 and

5 (I) helping to protect shorelines from the forces of  
6 water erosion.

7 (6) Our changing climate, with weather patterns becoming  
8 more extreme and less predictable, heightens the need for some  
9 or all of the benefits that Illinois' wetlands provide,  
10 including flood control, coastal resilience, water quality,  
11 aquifer recharge, habitat, and maintenance of baseflow to  
12 recharge rivers, streams, and local or regional underground  
13 water supplies.

14 (7) Illinois historically relied on the Clean Water Act's  
15 permit program administered by the U.S. Army Corps of  
16 Engineers and the U.S. Environmental Protection Agency to  
17 prevent harm to aquatic resources from unauthorized discharges  
18 of dredge or fill material.

19 (8) After a Supreme Court decision created uncertainty  
20 about federal protections for some "isolated" wetlands, the  
21 General Assembly passed the Interagency Wetland Policy Act to  
22 protect these wetlands from State agency actions and achieve  
23 no net loss of wetlands.

24 (9) Recently, the Supreme Court's decision in Sackett v.  
25 EPA rolled back the scope of waters of the United States,  
26 thereby removing Clean Water Act protections for many waters

1 of the State, including wetlands, such as bottomland hardwood  
2 forested wetlands that are separated from the Illinois River  
3 by levees that provide significant flood control protections.

4 (10) It is important to adopt protections under State law  
5 to protect Illinois waters from pollution and destruction to  
6 reinstate protections lost by rolling back the scope of Clean  
7 Water Act protections.

8 Section 10. Definitions.

9 "Advanced Identification sites" or "ADID" means aquatic  
10 sites that have been determined to provide Biological Values  
11 by the U.S. Army Corps of Engineers and U.S. Environmental  
12 Protection Agency Advanced Identification Study in accordance  
13 with 40 C.F.R. Part 230.80 as of the date of enactment of this  
14 Act.

15 "Affected property" means any property upon which a  
16 regulated activity is conducted.

17 "Agency" means the Illinois Environmental Protection  
18 Agency.

19 "Agricultural land" means land that is currently used for  
20 normal farming or ranching activities, consistent with Section  
21 404(f) of the Clean Water Act.

22 "Avoidance" means any action taken in a manner such that a  
23 regulated activity will not occur, consistent with the  
24 404(b) (1) Guidelines.

25 "Bog" means a peat-accumulating wetland that has no

1 significant inflows or outflows and supports acidophilic  
2 mosses, particularly sphagnum, resulting in highly acidic  
3 conditions.

4 "Bottomland hardwood" means forested riverine floodplain  
5 forest in the 100-year flood plain of Illinois rivers and  
6 streams which are among the most productive and ecologically  
7 important wetlands in the world, providing wildlife habitat,  
8 flood control, erosion prevention, carbon sequestration,  
9 wildlife corridors, and water quality benefits.

10 "Committee" means the Wetlands and Small Streams Advisory  
11 Committee for purposes of this Act.

12 "Contiguous area" means the portion of a wetland or small  
13 stream that extends beyond the property boundary of the  
14 affected property.

15 "Corps of Engineers" or "COE" means the U.S. Army Corps of  
16 Engineers.

17 "Corps of Engineers Wetlands Delineation Manual" means the  
18 1987 U.S. Army Corps of Engineers, Wetlands Delineation  
19 Manual, Research Program Technical Report Y-87-1, and any  
20 applicable Regional Supplements thereto issued prior to May,  
21 2023.

22 "Cypress swamp" means forested, permanent, or  
23 semi-permanent bodies of water, with species assemblage's  
24 characteristic of the Gulf of Mexico and Southeastern Coastal  
25 Plains and including bald cypress, which are found in extreme  
26 southern Illinois.

1 "Department" means the Illinois Department of Natural  
2 Resources.

3 "Director" means the Director of the Illinois Department  
4 of Natural Resources.

5 "Fen" means a wetland fed by an alkaline water source such  
6 as a calcareous spring or seep.

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

16 "High-Quality Aquatic Resources (HQAR)" means high quality  
17 aquatic resources (HQAR) consistent with the guidelines of the  
18 Chicago District of the U.S. Army Corps of Engineers.

19 "Individual permit" means a permit issued by the  
20 Department pursuant to Section 30 of this Act after  
21 case-specific sequenced review (avoidance, minimization,  
22 mitigation) of the proposed project and certification of  
23 compliance with State water quality standards.

24 "In Lieu Fee Mitigation" means a payment to the Illinois  
25 Department of Natural Resources or a Department approved In  
26 Lieu Fee Program made by an applicant to satisfy a mitigation

1 requirement for Class III in accordance with this Act and  
2 implementing regulations.

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

13 "Minimization" means, consistent with federal Section  
14 404(b)(1) Guidelines and this Act, reducing as much as  
15 practicable the adverse environmental impact of an unavoidable  
16 regulated activity.

17 "Mitigation" means, for purposes of this Act, the  
18 restoration, establishment, enhancement or protection and  
19 maintenance of wetlands and other aquatic resources for the  
20 purpose of compensating for unavoidable adverse impacts that  
21 remain after all appropriate and practicable avoidance and  
22 minimization have been achieved. Mitigation must be consistent  
23 with the requirements of this Act. Mitigation may include  
24 wetlands creation if authorized by the Department in  
25 situations in which other mitigation is impractical and the  
26 likelihood of success is high. Wetlands creation is restricted



1 to areas that are currently non-wetland.

2 "Nationwide permit" means a nationwide permit issued by  
3 the U.S. Army Corps of Engineers as of the date of enactment of  
4 this Act.

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

7 "Permit" means a written authorization issued by the  
8 Department of Natural Resources pursuant to this Act and  
9 implementing regulations. Permit includes "general permits" as  
10 well as "individual permits."

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

16 "Predischarge Notification" means notice that a permittee  
17 must provide the Department before undertaking an activity  
18 authorized by a general permit.

19 "Prior converted cropland" means a converted wetland where  
20 the conversion occurred prior to December 23, 1985, an  
21 agricultural commodity has been produced at least once before  
22 December 23, 1985, remains available for agricultural  
23 commodity production, and as of December 23, 1985, the  
24 converted wetland did not support woody vegetation and met the  
25 following hydrologic criteria for a farmed wetland: (i)  
26 inundation was less than 15 consecutive days during the

1 growing season or 10% of the growing season, whichever is  
2 less, in most years (50% chance or more); and (ii) if a  
3 pothole, ponding was less than 7 consecutive days during the  
4 growing season in most years (50% chance or more) and  
5 saturation was less than 14 consecutive days during the  
6 growing season most years (50% chance or more).

7 "Regulated activity" means the discharge of dredged or  
8 fill material from a point source into a wetland or small  
9 stream subject to this Act.

10 "Small stream" means first-order streams, including  
11 intermittent, ephemeral, and headwater streams and  
12 tributaries. "Small stream" does not include Waters of the  
13 United States.

14 "Threatened or endangered species" means those species  
15 that have been designated as threatened or endangered pursuant  
16 to the Illinois Endangered Species Protection Act and those  
17 species that have been listed as threatened or endangered  
18 pursuant to federal law under the Endangered Species Act.

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

20 "Wetlands" means those areas that are inundated or  
21 saturated by surface or ground water at a frequency or  
22 duration sufficient to support, and that under normal  
23 circumstances do support, a prevalence of vegetation typically  
24 adapted for life in saturated soil conditions.

25 "Wetland mitigation bank" means a site where wetlands have  
26 been restored, created, enhanced, or, in exceptional

1 circumstances, preserved expressly for the purpose of  
2 providing mitigation for impacts to wetlands and that has been  
3 approved by the Department or the Corps of Engineers in  
4 accordance with the process established in 33 C.F.R. 332.8 and  
5 40 C.F.R. 230.98 and Department regulations implementing this  
6 Act.

7 Section 15. Exemptions.

8 (a) Consistent with Section 404(f) of the Clean Water Act,  
9 as long as they do not have as their purpose bringing a wetland  
10 or stream into a use to which it was not previously subject and  
11 do not entail discharge of toxic pollutants, the following are  
12 not prohibited by or otherwise subject to regulation under  
13 this Act:

14 (1) Normal farming, silviculture, and ranching  
15 activities, including plowing, seeding, cultivating, minor  
16 drainage, and harvesting for the production of food,  
17 fiber, and forest products, or upland soil and water  
18 conservation practices.

19 (2) Maintenance, including emergency reconstruction of  
20 recently damaged parts, of currently serviceable  
21 structures such as dikes, dams, levees, groins, riprap,  
22 breakwaters, causeways, bridge abutments or approaches,  
23 and transportation structures. Maintenance does not  
24 include any modification that changes the character,  
25 scope, or size of the original fill design. Emergency

1 reconstruction must occur within a reasonable period of  
2 time after damage occurs in order to qualify for this  
3 exemption.

4 (3) Construction or maintenance of farm or stock ponds  
5 or irrigation ditches, or the maintenance (but not  
6 construction) of drainage ditches. Discharge associated  
7 with siphons, pumps, headgates, wingwalls, weirs,  
8 diversion structures, and such other facilities as are  
9 appurtenant and functionally related to irrigation and  
10 ditches are included in this definition.

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

24 (5) Construction or maintenance of farm roads or  
25 forest roads or temporary roads for moving mining  
26 equipment, where such roads are constructed and

1 maintained, in accordance with best management practices,  
2 to assure that flow and circulation patterns and chemical  
3 and biological characteristics of the wetland or small  
4 stream are not impaired, that the reach of the wetland or  
5 small stream is not reduced, and that any adverse effect  
6 on the aquatic environment will be otherwise minimized.

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

17 (b) Any exemption that is authorized by and pertaining to  
18 wetlands or streams that are subject to regulation under the  
19 federal Clean Water Act, or regulations promulgated  
20 thereunder, at the time of enactment of this Act, shall also be  
21 an exemption for the purpose of this Act.

22 (c) The following are not jurisdictional wetlands or  
23 streams for purposes of this Act:

24 (1) Waste treatment systems, including treatment ponds  
25 or lagoons designed to meet the requirements of the Clean  
26 Water Act and comply with State water quality standards.

1 (2) Prior converted cropland.

2 (3) Ditches (including roadside ditches) excavated  
3 wholly in and draining only dry land and that do not carry  
4 a relatively permanent flow of water.

5 (4) An artificially irrigated area that would revert  
6 to upland if the irrigation ceased.

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

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

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

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

24 (d) Any activity covered by the Interagency Wetland Policy  
25 Act of 1989 is exempt from the provisions of this Act. This  
26 subsection (d) applies only if the Agency is in compliance

1 with the Interagency Wetland Policy Act of 1989.

2 Section 20. Applicability. The requirements of this Act  
3 apply to all wetlands and small streams as those terms are  
4 defined in this Act. If a wetland or small stream ceases to  
5 meet that definition because it becomes subject to regulation  
6 under the federal Clean Water Act, it shall no longer be  
7 subject to the provisions of this Act. The Department may  
8 enter into an agreement with the Corps of Engineers to  
9 coordinate the permit program under this Act with the Corps of  
10 Engineers permit program under Section 404 of the Clean Water  
11 Act.

12 Section 25. Regulated activities; individual and general  
13 permits; small stream and wetland classification; mitigation;  
14 delineation; veto authority.

15 (a) No person may discharge dredged or fill material from  
16 a point source into a wetland or small stream protected by this  
17 Act except in accordance with the terms of an individual or  
18 general permit issued by the Department pursuant to this  
19 Section or Section 40 of this Act.

20 (b) Regulated activities in Class I wetlands and small  
21 streams shall only be authorized through individual permits  
22 issued by the Department under this Act. Regulated activities  
23 in Class II wetlands and small streams may be authorized under  
24 either an individual or general permit issued by the

1 Department in accordance with this Act. Regulated activities  
2 in Class III wetlands and small streams can be authorized  
3 under general permits unless the Department notifies the  
4 applicant within 30 days after receipt of a predischage  
5 notification that the regulated activity will result in a  
6 significant negative impact on State water quality. In such  
7 instances, an individual permit will be required.

8 (c) Wetlands and small streams shall be classified as  
9 follows:

10 (1) The Department shall classify a wetland as Class I  
11 if the wetland:

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

14 (B) has been designated a Ramsar wetland of  
15 international importance under the Convention on  
16 Wetlands;

17 (C) is designated for important flood protection  
18 services pursuant to subsection (3);

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

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

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



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

2 (2) The Department shall classify a non-Class I  
3 wetland as Class II if the wetland, including contiguous  
4 area, is larger than 0.5 acres. However, if a non-Class I  
5 wetland is smaller than 0.5 acres it shall be designated  
6 Class III.

7 (3) The Department may, in consultation with Illinois  
8 Emergency Management Agency and Office of Homeland  
9 Security, the Federal Emergency Management Agency or local  
10 authorities designate a wetland as Class I due to  
11 important flood protection services protecting human life  
12 and property if the wetland is no longer protected under  
13 the Clean Water Act.

14 (4) The Department shall classify a small stream as  
15 Class I if the stream:

16 (A) has been designated a National Wild and Scenic  
17 River, Study River, or Riverway;

18 (B) has been designated an Outstanding National  
19 Resource Water;

20 (C) has been designated an Outstanding State  
21 Resource Water pursuant to 35 Ill. Adm. Code 303.206;

22 (D) serves as drinking water supply;

23 (E) provides habitat or spawning area for rare or  
24 ecologically significant fish;

25 (F) has been rated A for Diversity or Integrity or  
26 mapped as Biologically Significant under the

1 Department's Integrating Multiple Taxa in a Biological  
2 Stream Rating System;

3 (G) is a District Designated Water; or

4 (H) contains significant mussel beds as determined  
5 in conjunction with the United States Fish and  
6 Wildlife Service.

7 (5) The Department shall classify a non-Class I small  
8 stream as Class II if the stream:

9 (A) is located within lands under public ownership  
10 or holdings;

11 (B) has been rated B for diversity or integrity  
12 under the Department's Integrating Multiple Taxa in a  
13 Biological Stream Rating System;

14 (C) is adjacent to an approved mitigation bank or  
15 mitigation site;

16 (D) is within 1 mile upstream or downstream of  
17 primary priority reaches;

18 (E) is designated as enhanced for dissolved oxygen  
19 under 35 Ill. Adm. Code 302.206; or

20 (F) is longer than 100 linear feet.

21 (5) The Department shall classify all small streams  
22 that are not Class I or Class II as Class III.

23 (d) Mitigation shall be required for all regulated  
24 activities regardless of the type of permit and shall be  
25 conducted according to the following preferred order:

26 (1) Discharges impacting Class I wetlands shall be

1 mitigated through either on site mitigation or off-site  
2 mitigation at an approved wetland mitigation bank within  
3 the same watershed as the location of the proposed fill.  
4 Mitigation shall be in kind, restoring to the maximum  
5 degree practicable as determined by the Department, both  
6 the type and functions of the wetland that will be  
7 affected by the regulated activity. The mitigation ratio  
8 shall be 5:1 unless the Director, for good cause shown and  
9 on a case-by-case basis, authorizes a higher mitigation  
10 ratio not to exceed 6:1 or a lower mitigation ratio not  
11 less than 4:1.

12 (2) Discharges impacting Class II wetlands shall be  
13 mitigated through either on site mitigation or off-site  
14 mitigation at an approved wetland mitigation bank within  
15 the same watershed as the location of the proposed fill.  
16 Mitigation shall be in kind, restoring to the maximum  
17 degree practicable as determined by the Department, both  
18 the type and functions of the wetland that will be  
19 affected by the regulated activity. The mitigation ratio  
20 shall be 3:1 unless the Director, for good cause shown and  
21 on a case-by-case basis, authorizes a higher mitigation  
22 ratio not to exceed 3.5:1 or a lower mitigation ratio not  
23 less than 2.5:1.

24 (3) Discharges impacting Class III wetlands shall be  
25 mitigated through either participation in an approved  
26 wetland mitigation bank or an approved in-lieu fee

1 program, unless the Department for good cause objects. The  
2 mitigation ratio shall be 1:1 for compensation through an  
3 approved wetland mitigation bank and 2:1 for compensation  
4 through an approved in-lieu fee program. The Director, for  
5 good cause shown and on a case-by-case basis, may  
6 authorize a higher or lower mitigation ratio.

7 (4) Discharges impacting Class I small streams shall  
8 be mitigated through either on site mitigation or off-site  
9 mitigation at an approved stream mitigation bank within  
10 the same watershed as the location of the proposed fill.  
11 Mitigation shall be in kind, restoring to the maximum  
12 degree practicable as determined by the Department, both  
13 the type and functions of the stream that will be affected  
14 by the regulated activity. The mitigation ratio shall be  
15 5:1 unless the Director, for good cause shown and on a  
16 case-by-case basis, authorizes a higher mitigation ratio  
17 not to exceed 6:1 or a lower mitigation ratio not less than  
18 4:1.

19 (5) Discharges impacting Class II small streams shall  
20 be mitigated through either on site mitigation or off-site  
21 mitigation at an approved stream mitigation bank within  
22 the same watershed as the location of the proposed fill.  
23 Mitigation shall be in kind, restoring to the maximum  
24 degree practicable as determined by the Department, both  
25 the type and functions of the stream that will be affected  
26 by the regulated activity. The mitigation ratio shall be

1           3:1 unless the Director, for good cause shown and on a  
2           case-by-case basis, authorizes a higher mitigation ratio  
3           not to exceed 3.5:1 or a lower mitigation ratio not less  
4           than 2.5:1.

5           (6) Discharges impacting Class III small streams shall  
6           be mitigated through either participation in an approved  
7           stream mitigation bank or an approved in-lieu fee program,  
8           unless the Department for good cause objects. The  
9           mitigation ratio shall be 1:1 for compensation through an  
10          approved stream mitigation bank and 2:1 for compensation  
11          through an approved in-lieu fee program. The Director, for  
12          good cause shown and on a case-by-case basis, may  
13          authorize a higher or lower mitigation ratio.

14          (e) The Agency may override the Department's decision to  
15          issue a permit under this Act by denying, restricting or  
16          otherwise limiting the scope of the permit in order to prevent  
17          violations of Illinois water quality standards, unacceptable  
18          adverse impacts to municipal water supplies, shellfish beds  
19          and fishery areas including spawning and breeding areas,  
20          wildlife, or recreational areas. Before making such  
21          determination, the Agency shall consult with the Department.  
22          The Agency shall set forth in writing and make public its  
23          findings and reasons for making any determination under this  
24          subsection.

25          (f) Individuals may request a wetland delineation and  
26          classification from the Department, but are not required to do

1 so. However, failure to do so is not a defense against  
2 violation of this Act. The person seeking a wetland  
3 delineation, classification, or both shall provide the  
4 Department with sufficient information to render a  
5 determination. The Department shall notify the person within  
6 15 days of receipt of the request if the request is incomplete.  
7 The Department shall, upon receipt of a complete request,  
8 provide the person with a determination within 30 days. The  
9 Department shall utilize the Corps of Engineers Wetlands  
10 Delineation Manual. Any determination under this subsection is  
11 a final decision for purposes of appeal under Section 55 of  
12 this Act. The Department shall honor delineations by the Corps  
13 of Engineers or by Corps of Engineers approved agencies.

14 (g) Individuals seeking an individual permit shall provide  
15 the Department with a complete application, including, at a  
16 minimum (i) a map of the area that will be affected by the  
17 activity, including wetland and water boundaries for the areas  
18 affected and the existing uses and structures; (ii) a wetland  
19 delineation made in accordance with the Corps of Engineers  
20 Wetland Delineation Manual and this Section; (iii) a  
21 description of the proposed activity, including its purpose,  
22 the location and dimensions of any structures, grading or  
23 fills, drainage, roads, sewers and water supply, parking lots,  
24 stormwater facilities, discharge of pollutants and onsite  
25 waste disposal; (iv) a description of any public benefit to be  
26 derived from the proposed project; and (v) the names and

1 addresses of adjacent landowners as determined by the current  
2 tax assessment rolls. The Department shall notify the  
3 applicant within 20 days if the permit application is  
4 incomplete and provide a reasonable time for the applicant to  
5 correct deficiencies in the permit application. Within 90 days  
6 of receipt of a complete permit application, the Department  
7 shall either issue, deny or issue the permit with conditions.  
8 All individual permit decisions are subject to public comment.  
9 If a public hearing is held, the deadline to make a permit  
10 determination is extended by 45 days. A person may submit  
11 concurrent requests for delineation, classification and permit  
12 application.

13 (h) The Department shall evaluate individual permit  
14 requests through the following sequence: (i) avoidance of  
15 impacts to aquatic resources if a less environmentally  
16 damaging practicable alternative exists; (ii) minimization of  
17 unavoidable impacts by taking appropriate and practicable  
18 steps such as reduction of the footprint of the fill; (iii)  
19 compensatory mitigation for any remaining impacts to aquatic  
20 resources in accordance with this Act. The Department shall  
21 not issue an individual permit pursuant to this Section unless  
22 the Agency has certified that the proposed activity will not  
23 cause or contribute to a violation of a State water quality  
24 standard. The Agency will be deemed to have certified that the  
25 proposed activity will not cause or contribute to a violation  
26 of a State water quality standard if it has not issued a

1 certification or a denial to issue a certification within 80  
2 days of the filing of a complete permit application under this  
3 Section.

4 (i) Upon request by an applicant, the Department is  
5 authorized to issue an after-the-fact permit if it determines  
6 that the activities covered by the after-the-fact permit were  
7 undertaken and conducted in response to emergency  
8 circumstances which constituted an imminent threat to persons,  
9 public infrastructure, personal property, or uninterrupted  
10 utility service. The request for an after-the-fact permit must  
11 be made as soon as reasonably possible after the event. The  
12 Department shall require compensatory mitigation.

13 Section 30. General Permits.

14 (a) Notwithstanding Section 25, any person who intends to  
15 conduct a regulated activity within the State may do so in  
16 accordance with a general permit issued by the Department  
17 under this Section except for activities in Class I wetlands  
18 or small streams.

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 COE, in effect on  
22 the date of the enactment of this Act, are adopted as general  
23 permits covering regulated activities subject to this Act  
24 except activities in Class I wetlands or Class I streams.  
25 Notwithstanding the foregoing, all such permits will include a



1 pre-discharge notification requirement and compensatory  
2 mitigation, unless the permit states compensatory mitigation  
3 is not required because the work is designed to improve water  
4 quality. In any case, compensatory mitigation is not required  
5 for impacts below 1/10 of an acre.

6 (c) The Department may adopt general permits, through  
7 public notice and comment rulemaking in accordance with the  
8 Illinois Administrative Procedure Act, 5 ILCS 100/, covering  
9 other activities that would be subject to the same permit  
10 limitations and conditions, if it determines that the  
11 activities in such a category will cause only minimal adverse  
12 environmental effects when performed separately, will have  
13 only minimal cumulative adverse effect on the environment,  
14 will not cause or contribute to a violation of State water  
15 quality standards when performed separately, and will have  
16 only a minimal cumulative adverse effect on water quality. The  
17 Department shall prescribe best management practices for any  
18 general permit issued under this Section. The Department shall  
19 include compensatory mitigation requirements in general  
20 permits for impact that exceed 1/10 of an acre.

21 (d) The Department must adopt a general permit for:

22 (1) Construction or maintenance of access roads for  
23 utility lines, substations, or related equipment or  
24 facilities with adequate culverts, bridges or other  
25 structures to provide freshwater connectivity and passage  
26 for fish or other aquatic life;

1           (2) Activities for the purpose of preserving and  
2           enhancing aviation safety or to prevent an airport hazard;  
3           and

4           (3) Conservation activities, such as habitat  
5           restoration and fish passage.

6           (e) No general permit adopted under paragraphs B, C, or D  
7           of this Section shall be for a period of more than 5 years  
8           after the date of its adoption; and the Department shall  
9           revoke or modify any such general permit, after opportunity  
10          for public hearing, if the Department determines that the  
11          activities authorized by the general permit have an adverse  
12          impact on the environment, cause or contribute to a violation  
13          of State water quality standards, or are more appropriately  
14          authorized by individual permits.

15          (f) Compliance with the terms of a general permit shall be  
16          deemed compliance with the provisions of this Act if the  
17          applicant:

18                 (1) files a predischage notification in accordance  
19                 with regulations adopted pursuant to this Act;

20                 (2) files any reports required by the general permit;

21                 (3) complies with any limitations required by the  
22                 general permit; and

23                 (4) complies with compensatory mitigation  
24                 requirements.

25          (g) The Department may respond to a predischage  
26          notification issued under this Section within 30 days after

1 the Department receives the notice.

2 Section 35. Illinois Wetlands and Streams Advisory  
3 Committee; duties; rules.

4 (a) The Wetlands and Streams Advisory Committee is  
5 created, which shall consist of the following 17 voting  
6 members appointed by the Governor:

7 (1) Five members representing the interests of  
8 business, industry, real estate and agriculture;

9 (2) Five members selected from the membership of  
10 environmental and conservation groups in the State;

11 (3) Two members representing counties exercising  
12 authority under Section 5-1062 or 5-1062.1 of the Counties  
13 Code to establish stormwater management programs;

14 (4) One member representing municipalities;

15 (5) One member representing building trades unions;  
16 and

17 (6) Three other members as determined by the Governor.

18 In addition to the 17 voting members, the Director of the  
19 Department of Natural Resources, or his or her designee, and  
20 the Director of the Illinois Environmental Protection Agency,  
21 or his or her designee, shall be non-voting members of this  
22 Committee.

23 The Committee shall biannually elect from its membership a  
24 Chair, who shall not be an employee of the Illinois  
25 Environmental Protection Agency or the Department. Members of

1 the Advisory Committee may organize themselves as they deem  
2 necessary and shall serve without compensation. The Department  
3 shall provide reasonable and necessary staff support to the  
4 Committee.

5 (b) The Committee shall provide support to the Department  
6 in developing implementing rules pursuant to Section 45 of  
7 this Act. From time to time the Committee shall review,  
8 evaluate and make recommendations to the Department:

9 (1) Regarding changes to State laws, rules, and  
10 procedures that relate to this Act; and

11 (2) Relating to the Department's efforts to implement  
12 this Act.

13 (c) Nothing in this Act shall preclude, at any time, the  
14 recommendation, proposal, or adoption of any other rules under  
15 Section 50 or deemed necessary for the orderly implementation  
16 of this Act.

17 (d) The Committee shall develop a plan for statewide  
18 wetlands protection and shall submit such plan to the  
19 Department. The Committee may assist the Department with  
20 development of a Memorandum of Agreement with the Corps of  
21 Engineers in accordance with Section 25.

22 (e) The Committee shall assist counties having stormwater  
23 management authority under Section 5-1062 or 5-1062.1 of the  
24 Counties Code in coordinating and unifying stormwater  
25 management regulations adopted thereto, as required in  
26 subsection (F) of Section 60.

1 Section 40. Rulemaking.

2 (a) The Department shall, in consultation with the  
3 Committee:

4 (1) Propose rules to implement Sections 30 and 40 of  
5 this Act within 120 days of passage of this Act,  
6 including: (A) Rules for the review, issuance, denial or  
7 issuance with conditions of individual permits; and (B)  
8 Rules to promulgate, revise or revoke general permits.

9 (2) Develop rules to administer and prioritize use of  
10 funding from the Wetlands and Small Streams Protection  
11 Fund pursuant to Section 65 of this Act.

12 (3) Develop rules to approve and administer mitigation  
13 banks and in lieu fee programs under Section 43 of this  
14 Act, including:

15 (A) Criteria that an applicant to operate a  
16 mitigation or in lieu fee program under Section 43 of  
17 this Act shall meet that are at least as stringent as  
18 the Army Corps of Engineers requirements (33 CFR Part  
19 332);

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) Develop rules within 120 days of passage of this

1 Act to establish the procedures under which a governmental  
2 body with a stormwater management program under Section  
3 5-1062 of the Counties Code shall be recognized to have  
4 met the conditions of division (b) of Section 60 of this  
5 Act; and

6 (5) Develop any other rules necessary to administer  
7 this Act.

8 (b) The Department may, in consultation with the  
9 Committee, provide by rule for any requirements regarding  
10 bonds or letters of credit in favor of the State, including  
11 conditions sufficient to secure compliance with conditions and  
12 limitations of a permit.

13 Section 45. Appeal of final Agency decision; judicial  
14 review.

15 (a) Any permit applicant who has been denied a permit in  
16 whole or in part, and any person who participated in the permit  
17 proceeding and who is aggrieved by a decision of the  
18 Department to grant a permit in whole or in part, may appeal  
19 the decision to the Director within 60 days of the permit grant  
20 or denial. In all such appeals, the burden of persuasion shall  
21 be on the party appealing the Department's decision.

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

1 Section 50. Investigation; enforcement.

2 (a) In accordance with constitutional limitations, the  
3 Department shall have authority to enter at all reasonable  
4 times upon any private or public property for the purpose of  
5 inspecting and investigating to ascertain compliance and  
6 possible violations of this Act, implementing regulations, or  
7 permits.

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

17 (c) Any person who violates any provision of this Act, any  
18 rule adopted hereunder, or any permit or term or condition  
19 thereof, shall be liable for a civil penalty not to exceed  
20 \$10,000 per day of violation. Any such penalty shall be made  
21 payable to the Wetlands and Small Streams Protection Fund and  
22 shall be deposited into that Fund as provided in Section 65. In  
23 assessing a penalty, courts may consider any matters of record  
24 including:

25 (1) The duration and gravity of the violation;

1           (2) The presence or absence of due diligence on the  
2 part of the violator in attempting to comply with the Act;

3           (3) Any economic benefits accrued by the violator  
4 through the violation;

5           (4) The likely deterrence effect of the penalty; and

6           (5) Any history on the part of the violator of past  
7 violations of this Act.

8           (d) Violations of this Act, rules adopted hereunder or  
9 permits shall not be deemed criminal offenses.

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

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

20           (g) The Attorney General or States Attorney of the county  
21 where the affected wetland or stream is located, may, upon his  
22 or her own motion or upon request of the Department, institute  
23 a civil action in circuit court for an injunction or other  
24 appropriate legal action to restrain a violation of this Act.  
25 In the proceeding, the court shall determine whether a  
26 violation has been committed or is likely to occur, and shall



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

14 (h) This Act is enforceable under Section 31(d) of the  
15 Illinois Environmental Protection Act, 415 ILCS 5/31.

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

21 (j) All costs, fees and expenses in connection with an  
22 enforcement or restoration action shall be assessed as damages  
23 against the violator.

24 (k) Enforcement actions under this Section may be  
25 concurrent or separate.

1 Section 55. County authority.

2 (a) Nothing in this Act preempts or denies the right of any  
3 governmental body with a stormwater management program under  
4 Section 5-1062 of the Counties Code to control or regulate  
5 activities in any wetlands within the jurisdiction of the  
6 governmental body.

7 (b) Upon the request of a governmental body with a  
8 stormwater management program under Section 5-1062 of the  
9 Counties Code, the Director shall, within 30 calendar days of  
10 receiving the written request, provide a letter recognizing  
11 whether the governmental body's stormwater management program:

12 (1) Provides wetlands and streams protection  
13 consistent with the scope and intent of this Act;

14 (2) Has an administration and qualified staff to  
15 implement the governmental body's stormwater management  
16 program; and

17 (3) Is implementing and enforcing their stormwater  
18 management program.

19 (c) Activities within or affecting wetlands that occur  
20 within the jurisdiction of a governmental body with a  
21 stormwater management program under Section 5-1062 of the  
22 Counties Code that meets the provisions of paragraphs (1),  
23 (2), and (3) of subsection (B) of this Section are deemed to be  
24 in compliance with the requirements of this Act, but must meet  
25 those county stormwater management requirements, at a minimum.  
26 This also applies during the period that the Department is

1 considering a county's request under subsection (B), but the  
2 requirements of this Act do apply until the county has  
3 requested recognition under subsection (B). Lake, Cook, Kane,  
4 McHenry, and DuPage Counties are deemed to have requested  
5 recognition as of the date of enactment of this Act.

6 (d) The Director may rescind recognition status, or place  
7 conditions on recognition status, after notification, a public  
8 hearing and a reasonable opportunity for the county to cure  
9 the defect, if the governmental body with a stormwater  
10 management program under Section 5-1062 of the Counties Code  
11 continues to no longer meet the provisions of paragraphs (1),  
12 (2) and (3) of subsection (B) of this Section.

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

17 (f) Counties having authority under Section 5-1062 of the  
18 Counties Code to adopt a stormwater management program shall  
19 seek the assistance of the Chicago Metropolitan Agency for  
20 Planning to coordinate and unify regulations adopted pursuant  
21 thereto.

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

24 (h) The Department may provide technical assistance and  
25 grant funding pursuant to Section 65 to governmental bodies  
26 with approved programs under this Section.

1 Section 60. Wetlands and Small Streams Protection Fund.

2 (a) The Wetlands and Small Streams Protection Fund shall  
3 be established as a special fund in the State Treasury, to be  
4 managed by the Department, separate and distinct from the  
5 General Revenue Fund. Any interest earned by the Wetlands and  
6 Small Streams Protection Fund shall be credited to the Fund.  
7 The purpose of the Wetlands and Small Streams Protection Fund  
8 is to further wetlands and small streams protection and  
9 management. Its purpose is to supplement, not supplant,  
10 existing Department resources. The Wetlands and Small Streams  
11 Protection Fund may not be utilized to pay for compensatory  
12 mitigation obligations under this Act.

13 (b) Pursuant to Section 55, all penalties collected by the  
14 Department pursuant to this Act shall be deposited into the  
15 Wetlands and Small Streams Protection fund.

16 (c) The Illinois General Assembly may appropriate  
17 additional monies to the Wetlands and Small Streams Protection  
18 Fund to implement this Act.

19 (d) The Department shall utilize the monies in the  
20 Wetlands and Small Streams Protection fund to further wetlands  
21 and small streams protection and management. Eligible uses  
22 include:

23 (1) Providing technical assistance and grant funding  
24 to counties with approved programs under Section 60 to  
25 restore, preserve, enhance, protect or maintain wetlands,

1 streams, and upland buffers, particularly Class I areas or  
2 wetlands, waters and buffers that provide floodwater  
3 storage and flood risk reduction;

4 (2) Supplementing other State, local or private  
5 funding for non-compensatory wetlands and small streams  
6 restoration, enhancement, preservation and maintenance;

7 (3) Matching funds for wetland and stream inventories,  
8 mapping, watershed planning and wetland program  
9 development grants; and

10 (4) Staffing and administrative costs for the  
11 Department to implement this Act.

12 Section 65. Review Fee. All inquiries to determine whether  
13 or not the proposed activity requires permit authorization by  
14 the Department under this Act will be reviewed by the  
15 Department free of charge. A permit review fee is required for  
16 all permit applications under this Act. The Department shall  
17 establish a graduated review fee payment schedule from \$260 to  
18 \$5,000 depending on the intensity of required review and the  
19 size of the individual project. Accordingly, highest review  
20 fees will be charged for individual permits to authorize major  
21 projects. The Department may charge a reasonable fee for  
22 wetlands delineation and classification.

23 Section 90. The State Finance Act is amended by adding  
24 Section 5.1015 as follows:

1 (30 ILCS 105/5.1015 new)

2 Sec. 5.1015. The Wetlands and Small Streams Protection  
3 Fund.

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

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