

1                                    AMENDMENT TO SENATE BILL 356

2            AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 356 by replacing  
3 everything after the enacting clause with the following:

4            "Section 5. The Environmental Protection Act is amended  
5 by changing Section 39.2 as follows:

6            (415 ILCS 5/39.2) (from Ch. 111 1/2, par. 1039.2)

7            Sec. 39.2. Local siting review.

8            (a) The county board of the county or the governing body  
9 of the municipality, as determined by paragraph (c) of  
10 Section 39 of this Act, shall approve or disapprove the  
11 request for local siting approval for each pollution control  
12 facility which is subject to such review. An applicant for  
13 local siting approval shall submit sufficient details  
14 describing the proposed facility to demonstrate compliance,  
15 and local siting approval shall be granted only if the  
16 proposed facility meets the following criteria:

17            (i) the facility is necessary to accommodate the  
18 waste needs of the area it is intended to serve;

19            (ii) the facility is so designed, located and  
20 proposed to be operated that the public health, safety  
21 and welfare will be protected;

22            (iii) the facility is located so as to minimize

1 incompatibility with the character of the surrounding  
2 area and to minimize the effect on the value of the  
3 surrounding property;

4 (iv) (A) for a facility other than a sanitary  
5 landfill or waste disposal site, the facility is located  
6 outside the boundary of the 100 year flood plain or the  
7 site is flood-proofed; (B) for a facility that is a  
8 sanitary landfill or waste disposal site, the facility is  
9 located outside the boundary of the 100-year floodplain,  
10 or if the facility is a facility described in subsection  
11 (b)(3) of Section 22.19a, the site is flood-proofed;

12 (v) the plan of operations for the facility is  
13 designed to minimize the danger to the surrounding area  
14 from fire, spills, or other operational accidents;

15 (vi) the traffic patterns to or from the facility  
16 are so designed as to minimize the impact on existing  
17 traffic flows;

18 (vii) if the facility will be treating, storing or  
19 disposing of hazardous waste, an emergency response plan  
20 exists for the facility which includes notification,  
21 containment and evacuation procedures to be used in case  
22 of an accidental release;

23 (viii) if the facility is to be located in a county  
24 where the county board has adopted a solid waste  
25 management plan consistent with the planning requirements  
26 of the Local Solid Waste Disposal Act or the Solid Waste  
27 Planning and Recycling Act, the facility is consistent  
28 with that plan; and

29 (ix) if the facility will be located within a  
30 regulated recharge area, any applicable requirements  
31 specified by the Board for such areas have been met.

32 The county board or the governing body of the  
33 municipality may also consider as evidence the previous  
34 operating experience and past record of convictions or

1 admissions of violations of the applicant (and any subsidiary  
2 or parent corporation) in the field of solid waste management  
3 when considering criteria (ii) and (v) under this Section.

4 (b) No later than 14 days prior to a request for  
5 location approval the applicant shall cause written notice of  
6 such request to be served either in person or by registered  
7 mail, return receipt requested, on the owners of all property  
8 within the subject area not solely owned by the applicant,  
9 and on the owners of all property within 250 feet in each  
10 direction of the lot line of the subject property, said  
11 owners being such persons or entities which appear from the  
12 authentic tax records of the County in which such facility is  
13 to be located; provided, that the number of all feet occupied  
14 by all public roads, streets, alleys and other public ways  
15 shall be excluded in computing the 250 feet requirement;  
16 provided further, that in no event shall this requirement  
17 exceed 400 feet, including public streets, alleys and other  
18 public ways.

19 Such written notice shall also be served upon members of  
20 the General Assembly from the legislative district in which  
21 the proposed facility is located and shall be published in a  
22 newspaper of general circulation published in the county in  
23 which the site is located.

24 Such notice shall state the name and address of the  
25 applicant, the location of the proposed site, the nature and  
26 size of the development, the nature of the activity proposed,  
27 the probable life of the proposed activity, the date when the  
28 request for site approval will be submitted, and a  
29 description of the right of persons to comment on such  
30 request as hereafter provided.

31 (c) An applicant shall file a copy of its request with  
32 the county board of the county or the governing body of the  
33 municipality in which the proposed site is located. The  
34 request shall include (i) the substance of the applicant's

1 proposal and (ii) all documents, if any, submitted as of that  
2 date to the Agency pertaining to the proposed facility,  
3 except trade secrets as determined under Section 7.1 of this  
4 Act. All such documents or other materials on file with the  
5 county board or governing body of the municipality shall be  
6 made available for public inspection at the office of the  
7 county board or the governing body of the municipality and  
8 may be copied upon payment of the actual cost of  
9 reproduction.

10 Any person may file written comment with the county board  
11 or governing body of the municipality concerning the  
12 appropriateness of the proposed site for its intended  
13 purpose. The county board or governing body of the  
14 municipality shall consider any comment received or  
15 postmarked not later than 30 days after the date of the last  
16 public hearing.

17 (d) At least one public hearing is to be held by the  
18 county board or governing body of the municipality no sooner  
19 than 90 days but no later than 120 days from receipt of the  
20 request for site approval. No later than 14 days prior to  
21 such hearing notice shall be published in a newspaper of  
22 general circulation published in the county of the proposed  
23 site, and delivered by certified mail to all members of the  
24 General Assembly from the district in which the proposed site  
25 is located, to the governing authority of every municipality  
26 contiguous to the proposed site or contiguous to the  
27 municipality in which the proposed site is to be located, to  
28 the county board of the county where the proposed site is to  
29 be located, if the proposed site is located within the  
30 boundaries of a municipality, and to the Agency. Members or  
31 representatives of the governing authority of a municipality  
32 contiguous to the proposed site or contiguous to the  
33 municipality in which the proposed site is to be located  
34 and, if the proposed site is located in a municipality,

1 members or representatives of the county board of a county in  
2 which the proposed site is to be located may appear at and  
3 participate in public hearings held pursuant to this Section.  
4 The public hearing shall develop a record sufficient to form  
5 the basis of appeal of the decision in accordance with  
6 Section 40.1 of this Act. The fact that a member of the  
7 county board or governing body of the municipality has  
8 publicly expressed an opinion on an issue related to a site  
9 review proceeding shall not preclude the member from taking  
10 part in the proceeding and voting on the issue.

11 (e) Decisions of the county board or governing body of  
12 the municipality are to be in writing, specifying the reasons  
13 for the decision, such reasons to be in conformance with  
14 subsection (a) of this Section. In granting approval for a  
15 site the county board or governing body of the municipality  
16 may impose such conditions as may be reasonable and necessary  
17 to accomplish the purposes of this Section and as are not  
18 inconsistent with regulations promulgated by the Board. Such  
19 decision shall be available for public inspection at the  
20 office of the county board or governing body of the  
21 municipality and may be copied upon payment of the actual  
22 cost of reproduction. If there is no final action by the  
23 county board or governing body of the municipality within 180  
24 days after the filing of the request for site approval the  
25 applicant may deem the request approved.

26 At any time prior to completion by the applicant of the  
27 presentation of the applicant's factual evidence and an  
28 opportunity for cross-questioning by the county board or  
29 governing body of the municipality and any participants, the  
30 applicant may file not more than one amended application upon  
31 payment of additional fees pursuant to subsection (k); in  
32 which case the time limitation for final action set forth in  
33 this subsection (e) shall be extended for an additional  
34 period of 90 days.

1           If, prior to making a final local siting decision, a  
2 county board or governing body of a municipality has  
3 negotiated and entered into a host agreement with the local  
4 siting applicant, the terms and conditions of the host  
5 agreement, whether written or oral, shall be disclosed and  
6 made a part of the hearing record for that local siting  
7 proceeding. In the case of an oral agreement, the disclosure  
8 shall be made in the form of a written summary jointly  
9 prepared and submitted by the county board or governing body  
10 of the municipality and the siting applicant and shall  
11 describe the terms and conditions of the oral agreement.

12           (e-5) Siting approval obtained pursuant to this Section  
13 is transferable and may be transferred to a subsequent owner  
14 or operator. In the event that siting approval has been  
15 transferred to a subsequent owner or operator, that  
16 subsequent owner or operator assumes and takes subject to any  
17 and all conditions imposed upon the prior owner or operator  
18 by the county board of the county or governing body of the  
19 municipality pursuant to subsection (e). However, any such  
20 conditions imposed pursuant to this Section may be modified  
21 by agreement between the subsequent owner or operator and the  
22 appropriate county board or governing body. Further, in the  
23 event that siting approval obtained pursuant to this Section  
24 has been transferred to a subsequent owner or operator, that  
25 subsequent owner or operator assumes all rights and  
26 obligations and takes the facility subject to any and all  
27 terms and conditions of any existing host agreement between  
28 the prior owner or operator and the appropriate county board  
29 or governing body.

30           (f) A local siting approval granted under this Section  
31 shall expire at the end of 2 calendar years from the date  
32 upon which it was granted, unless the local siting approval  
33 granted under this Section is for a sanitary landfill  
34 operation, in which case the approval shall expire at the end

1 of 3 calendar years from the date upon which it was granted,  
2 and unless within that period the applicant has made  
3 application to the Agency for a permit to develop the site.  
4 In the event that the local siting decision has been  
5 appealed, such expiration period shall be deemed to begin on  
6 the date upon which the appeal process is concluded.

7 Except as otherwise provided in this subsection, upon the  
8 expiration of a development permit under subsection (k) of  
9 Section 39, any associated local siting approval granted for  
10 the facility under this Section shall also expire.

11 If a first development permit for a municipal waste  
12 incineration facility expires under subsection (k) of Section  
13 39 after September 30, 1989 due to circumstances beyond the  
14 control of the applicant, any associated local siting  
15 approval granted for the facility under this Section may be  
16 used to fulfill the local siting approval requirement upon  
17 application for a second development permit for the same  
18 site, provided that the proposal in the new application is  
19 materially the same, with respect to the criteria in  
20 subsection (a) of this Section, as the proposal that received  
21 the original siting approval, and application for the second  
22 development permit is made before January 1, 1990.

23 (g) The siting approval procedures, criteria and appeal  
24 procedures provided for in this Act for new pollution control  
25 facilities shall be the exclusive siting procedures and rules  
26 and appeal procedures for facilities subject to such  
27 procedures. Local zoning or other local land use requirements  
28 shall not be applicable to such siting decisions.

29 (h) Nothing in this Section shall apply to any existing  
30 or new pollution control facility located within the  
31 corporate limits of a municipality with a population of over  
32 1,000,000.

33 (h-5) In a county with a population over 3,000,000, if a  
34 pollution control facility received zoning approval before

1 January 1, 1994, then the facility shall be deemed approved  
2 under this Section.

3 (i) The Department shall make a study of technical  
4 considerations relating to the siting of new pollution  
5 control facilities. Such study shall include, but need not be  
6 limited to, a determination of the geologic and hydrologic  
7 conditions in the State most suitable for the siting of such  
8 facilities, the establishment of a data base on such  
9 conditions in Illinois, and recommendations for the  
10 establishment of technical guidelines and criteria to be used  
11 in making such siting decisions. The Department shall report  
12 such study and recommendations to the General Assembly, the  
13 Governor, the Board and the public no later than October 1,  
14 1984.

15 The Board shall adopt regulations establishing the  
16 geologic and hydrologic siting criteria necessary to protect  
17 usable groundwater resources which are to be followed by the  
18 Agency in its review of permit applications for new pollution  
19 control facilities. Such regulations, insofar as they apply  
20 to new pollution control facilities authorized to store,  
21 treat or dispose of any hazardous waste, shall be at least as  
22 stringent as the requirements of the Resource Conservation  
23 and Recovery Act and any State or federal regulations adopted  
24 pursuant thereto.

25 (j) Any new pollution control facility which has never  
26 obtained local siting approval under the provisions of this  
27 Section shall be required to obtain such approval after a  
28 final decision on an appeal of a permit denial.

29 (k) A county board or governing body of a municipality  
30 may charge applicants for siting review under this Section a  
31 reasonable fee to cover the reasonable and necessary costs  
32 incurred by such county or municipality in the siting review  
33 process.

34 (l) The governing Authority as determined by subsection

1 (c) of Section 39 of this Act may request the Department of  
2 Transportation to perform traffic impact studies of proposed  
3 or potential locations for required pollution control  
4 facilities.

5 (m) An applicant may not file a request for local siting  
6 approval which is substantially the same as a request which  
7 was disapproved pursuant to a finding against the applicant  
8 under any of criteria (i) through (ix) of subsection (a) of  
9 this Section within the preceding 2 years.

10 (n) In any review proceeding of a decision of the county  
11 board or governing body of a municipality made pursuant to  
12 the local siting review process, the petitioner in the review  
13 proceeding shall pay to the county or municipality the cost  
14 of preparing and certifying the record of proceedings.  
15 Should the petitioner in the review proceeding fail to make  
16 payment, the provisions of Section 3-109 of the Code of Civil  
17 Procedure shall apply.

18 In the event the petitioner is a citizens' group that  
19 participated in the siting proceeding and is so located as to  
20 be affected by the proposed facility, such petitioner shall  
21 be exempt from paying the costs of preparing and certifying  
22 the record.

23 (o) Notwithstanding any other provision of this Section,  
24 a transfer station used exclusively for landscape waste,  
25 where landscape waste is held no longer than 24 hours from  
26 the time it was received, is not subject to the requirements  
27 of local siting approval under this Section, but is subject  
28 only to local zoning approval.

29 (Source: P.A. 90-217, eff. 1-1-98; 90-409, eff. 8-15-97;  
30 90-503, eff. 8-19-97; 90-537, eff. 11-26-97; 90-655, eff.  
31 7-30-98; 91-588, eff. 8-14-99.)

32 Section 99. Effective date. This Act takes effect upon  
33 becoming law."