

1 AN ACT concerning environmental protection.

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

4 (30 ILCS 105/5.545 rep.)

5 Section 5. The State Finance Act is amended by repealing  
6 Section 5.545, as added by P.A. 92-486.

7 Section 10. The Environmental Protection Act is amended  
8 by changing Section 58.15 as follows:

9 (415 ILCS 5/58.15)

10 Sec. 58.15. Brownfields Programs.

11 (A) Brownfields Redevelopment Loan Program.

12 (a) The Agency shall establish and administer a  
13 revolving loan program to be known as the "Brownfields  
14 Redevelopment Loan Program" for the purpose of providing  
15 loans to be used for site investigation, site remediation, or  
16 both, at brownfields sites. All principal, interest, and  
17 penalty payments from loans made under this subsection (A)  
18 ~~Section~~ shall be deposited into the Brownfields Redevelopment  
19 Fund and reused in accordance with this Section.

20 (b) General requirements for loans:

21 (1) Loans shall be at or below market interest  
22 rates in accordance with a formula set forth in  
23 regulations promulgated under subdivision (A)(c)  
24 ~~subsection-(e)~~ of this subsection (A) ~~Section~~.

25 (2) Loans shall be awarded subject to availability  
26 of funding based on the order of receipt of applications  
27 satisfying all requirements as set forth in the  
28 regulations promulgated under subdivision (A)(c)  
29 ~~subsection-(e)~~ of this subsection (A) ~~Section~~.

30 (3) The maximum loan amount under this subsection

1        (A) Section for any one project is \$1,000,000.

2            (4) In addition to any requirements or conditions  
3 placed on loans by regulation, loan agreements under the  
4 Brownfields Redevelopment Loan Program shall include the  
5 following requirements:

6            (A) the loan recipient shall secure the loan  
7 repayment obligation;

8            (B) completion of the loan repayment shall not  
9 exceed 5 years; and

10           (C) loan agreements shall provide for a  
11 confession of judgment by the loan recipient upon  
12 default.

13           (5) Loans shall not be used to cover expenses  
14 incurred prior to the approval of the loan application.

15           (6) If the loan recipient fails to make timely  
16 payments or otherwise fails to meet its obligations as  
17 provided in this subsection (A) Section or implementing  
18 regulations, the Agency is authorized to pursue the  
19 collection of the amounts past due, the outstanding loan  
20 balance, and the costs thereby incurred, either pursuant  
21 to the Illinois State Collection Act of 1986 or by any  
22 other means provided by law, including the taking of  
23 title, by foreclosure or otherwise, to any project or  
24 other property pledged, mortgaged, encumbered, or  
25 otherwise available as security or collateral.

26           (c) The Agency shall have the authority to enter into  
27 any contracts or agreements that may be necessary to carry  
28 out its duties or responsibilities under this subsection (A)  
29 Section. The Agency shall have the authority to promulgate  
30 regulations setting forth procedures and criteria for  
31 administering the Brownfields Redevelopment Loan Program.  
32 The regulations promulgated by the Agency for loans under  
33 this subsection (A) Section shall include, but need not be  
34 limited to, the following elements:

- 1 (1) loan application requirements;
- 2 (2) determination of credit worthiness of the loan
- 3 applicant;
- 4 (3) types of security required for the loan;
- 5 (4) types of collateral, as necessary, that can be
- 6 pledged for the loan;
- 7 (5) special loan terms, as necessary, for securing
- 8 the repayment of the loan;
- 9 (6) maximum loan amounts;
- 10 (7) purposes for which loans are available;
- 11 (8) application periods and content of
- 12 applications;
- 13 (9) procedures for Agency review of loan
- 14 applications, loan approvals or denials, and loan
- 15 acceptance by the loan recipient;
- 16 (10) procedures for establishing interest rates;
- 17 (11) requirements applicable to disbursement of
- 18 loans to loan recipients;
- 19 (12) requirements for securing loan repayment
- 20 obligations;
- 21 (13) conditions or circumstances constituting
- 22 default;
- 23 (14) procedures for repayment of loans and
- 24 delinquent loans including, but not limited to, the
- 25 initiation of principal and interest payments following
- 26 loan acceptance;
- 27 (15) loan recipient responsibilities for work
- 28 schedules, work plans, reports, and record keeping;
- 29 (16) evaluation of loan recipient performance,
- 30 including auditing and access to sites and records;
- 31 (17) requirements applicable to contracting and
- 32 subcontracting by the loan recipient, including
- 33 procurement requirements;
- 34 (18) penalties for noncompliance with loan

1 requirements and conditions, including stop-work orders,  
2 termination, and recovery of loan funds; and

3 (19) indemnification of the State of Illinois and  
4 the Agency by the loan recipient.

5 (d) Moneys in the Brownfields Redevelopment Fund may be  
6 used as a source of revenue or security for the principal and  
7 interest on revenue or general obligation bonds issued by the  
8 State or any political subdivision or instrumentality  
9 thereof, if the proceeds of those bonds will be deposited  
10 into the Fund.

11 (B) Brownfields Site Restoration Program.

12 (a)(1) The Agency, with the assistance of the  
13 Department of Commerce and Community Affairs, must  
14 establish and administer a program for the payment of  
15 remediation costs to be known as the Brownfields Site  
16 Restoration Program. The Agency, through the Program,  
17 shall provide Remediation Applicants with financial  
18 assistance for the investigation and remediation of  
19 abandoned or underutilized properties. The investigation  
20 and remediation shall be performed in accordance with  
21 this Title XVII of this Act.

22 (2) For each State fiscal year in which funds are  
23 made available to the Agency for payment under this  
24 subsection (B), the Agency must, subject to the  
25 availability of funds, allocate 20% of the funds to be  
26 available to Remediation Applicants within counties with  
27 populations over 2,000,000. The remaining funds must be  
28 made available to all other Remediation Applicants in the  
29 State.

30 (3) The Agency must not approve payment in excess  
31 of \$750,000 to a Remediation Applicant for remediation  
32 costs incurred at a remediation site. Eligibility must be  
33 determined based on a minimum capital investment in the  
34 redevelopment of the site, and payment amounts must not

1 exceed the net economic benefit to the State of the  
2 remediation project. In addition to these limitations,  
3 the total payment to be made to an applicant must not  
4 exceed an amount equal to 20% of the capital investment  
5 at the site.

6 (4) Only those remediation projects for which a No  
7 Further Remediation Letter is issued by the Agency after  
8 December 31, 2001 are eligible to participate in the  
9 Brownfields Site Restoration Program. The program does  
10 not apply to any sites that have received a No Further  
11 Remediation Letter prior to December 31, 2001 or for  
12 costs incurred prior to the Department of Commerce and  
13 Community Affairs approving a site eligible for the  
14 Brownfields Site Restoration Program.

15 (5) Brownfields Site Restoration Program funds  
16 shall be subject to availability of funding and  
17 distributed based on the order of receipt of applications  
18 satisfying all requirements as set forth in this Section.

19 (b) Prior to applying to the Agency for payment, a  
20 Remediation Applicant shall first submit to the Agency its  
21 proposed remediation costs. The Agency shall make a  
22 pre-application assessment, which is not to be binding upon  
23 the Department of Commerce and Community Affairs or upon  
24 future review of the project, relating only to whether the  
25 Agency has adequate funding to reimburse the applicant for  
26 the remediation costs if the applicant is found to be  
27 eligible for reimbursement of remediation costs. If the  
28 Agency determines that it is likely to have adequate funding  
29 to reimburse the applicant for remediation costs, the  
30 Remediation Applicant may then submit to the Department of  
31 Commerce and Community Affairs an application for review of  
32 eligibility. The Department must review the eligibility  
33 application to determine whether the Remediation Applicant is  
34 eligible for the payment. The application must be on forms

1 prescribed and provided by the Department of Commerce and  
2 Community Affairs. At a minimum, the application must  
3 include the following:

4 (1) Information identifying the Remediation  
5 Applicant and the site for which the payment is being  
6 sought and the date of acceptance into the Site  
7 Remediation Program.

8 (2) Information demonstrating that the site for  
9 which the payment is being sought is abandoned or  
10 underutilized property. "Abandoned property" means real  
11 property previously used for, or that has the potential  
12 to be used for, commercial or industrial purposes that  
13 reverted to the ownership of the State, a county or  
14 municipal government, or an agency thereof, through  
15 donation, purchase, tax delinquency, foreclosure,  
16 default, or settlement, including conveyance by deed in  
17 lieu of foreclosure; or privately owned property that has  
18 been vacant for a period of not less than 3 years from  
19 the time an application is made to the Department of  
20 Commerce and Community Affairs. "Underutilized property"  
21 means real property of which less than 35% of the  
22 commercially usable space of the property and  
23 improvements thereon are used for their most commercially  
24 profitable and economically productive uses.

25 (3) Information demonstrating that remediation of  
26 the site for which the payment is being sought will  
27 result in a net economic benefit to the State of  
28 Illinois. The "net economic benefit" must be determined  
29 based on factors including, but not limited to, the  
30 capital investment, the number of jobs created, the  
31 number of jobs retained if it is demonstrated the jobs  
32 would otherwise be lost, capital improvements, the number  
33 of construction-related jobs, increased sales, material  
34 purchases, other increases in service and operational

1 expenditures, and other factors established by the  
2 Department of Commerce and Community Affairs. Priority  
3 must be given to sites located in areas with high levels  
4 of poverty, where the unemployment rate exceeds the State  
5 average, where an enterprise zone exists, or where the  
6 area is otherwise economically depressed as determined by  
7 the Department of Commerce and Community Affairs.

8 (4) An application fee in the amount set forth in  
9 subdivision (B)(c) for each site for which review of an  
10 application is being sought.

11 (c) The fee for eligibility reviews conducted by the  
12 Department of Commerce and Community Affairs under this  
13 subsection (B) is \$1,000 for each site reviewed. The  
14 application fee must be made payable to the State of Illinois  
15 for deposit into the Brownfields Redevelopment Fund.

16 (d) Within 60 days after receipt by the Department of  
17 Commerce and Community Affairs of an application meeting the  
18 requirements of subdivision (B)(b), the Department of  
19 Commerce and Community Affairs must issue a letter to the  
20 applicant approving the application, approving the  
21 application with modifications, or disapproving the  
22 application. If the application is approved or approved with  
23 modifications, the Department of Commerce and Community  
24 Affairs' letter must also include its determination of the  
25 "net economic benefit" of the remediation project and the  
26 maximum amount of the payment to be made available to the  
27 applicant for remediation costs. The payment by the Agency  
28 under this subsection (B) must not exceed the "net economic  
29 benefit" of the remediation project, as determined by the  
30 Department of Commerce and Community Affairs.

31 (e) An application for a review of remediation costs  
32 must not be submitted to the Agency unless the Department of  
33 Commerce and Community Affairs has determined the Remediation  
34 Applicant is eligible under subdivision (B)(d). If the

1 Department of Commerce and Community Affairs has determined  
2 that a Remediation Applicant is eligible under subdivision  
3 (B)(d), the Remediation Applicant may submit an application  
4 for payment to the Agency under this subsection (B). Except  
5 as provided in subdivision (B)(f), an application for review  
6 of remediation costs must not be submitted until a No Further  
7 Remediation Letter has been issued by the Agency and recorded  
8 in the chain of title for the site in accordance with Section  
9 58.10. The Agency must review the application to determine  
10 whether the costs submitted are remediation costs and whether  
11 the costs incurred are reasonable. The application must be  
12 on forms prescribed and provided by the Agency. At a  
13 minimum, the application must include the following:

14 (1) Information identifying the Remediation  
15 Applicant and the site for which the payment is being  
16 sought and the date of acceptance of the site into the  
17 Site Remediation Program.

18 (2) A copy of the No Further Remediation Letter  
19 with official verification that the letter has been  
20 recorded in the chain of title for the site and a  
21 demonstration that the site for which the application is  
22 submitted is the same site as the one for which the No  
23 Further Remediation Letter is issued.

24 (3) A demonstration that the release of the  
25 regulated substances of concern for which the No Further  
26 Remediation Letter was issued was not caused or  
27 contributed to in any material respect by the Remediation  
28 Applicant. The Agency must make determinations as to  
29 reimbursement availability consistent with rules adopted  
30 by the Pollution Control Board for the administration and  
31 enforcement of Section 58.9 of this Act.

32 (4) A copy of the Department of Commerce and  
33 Community Affairs' letter approving eligibility,  
34 including the net economic benefit of the remediation



1 project.

2 (5) An itemization and documentation, including  
3 receipts, of the remediation costs incurred.

4 (6) A demonstration that the costs incurred are  
5 remediation costs as defined in this Act and rules  
6 adopted under this Act.

7 (7) A demonstration that the costs submitted for  
8 review were incurred by the Remediation Applicant who  
9 received the No Further Remediation Letter.

10 (8) An application fee in the amount set forth in  
11 subdivision (B)(j) for each site for which review of  
12 remediation costs is requested.

13 (9) Any other information deemed appropriate by the  
14 Agency.

15 (f) An application for review of remediation costs may  
16 be submitted to the Agency prior to the issuance of a No  
17 Further Remediation Letter if the Remediation Applicant has  
18 a Remedial Action Plan approved by the Agency under the terms  
19 of which the Remediation Applicant will remediate groundwater  
20 for more than one year. The Agency must review the  
21 application to determine whether the costs submitted are  
22 remediation costs and whether the costs incurred are  
23 reasonable. The application must be on forms prescribed and  
24 provided by the Agency. At a minimum, the application must  
25 include the following:

26 (1) Information identifying the Remediation  
27 Applicant and the site for which the payment is being  
28 sought and the date of acceptance of the site into the  
29 Site Remediation Program.

30 (2) A copy of the Agency letter approving the  
31 Remedial Action Plan.

32 (3) A demonstration that the release of the  
33 regulated substances of concern for which the Remedial  
34 Action Plan was approved was not caused or contributed to

1 in any material respect by the Remediation Applicant.  
2 The Agency must make determinations as to reimbursement  
3 availability consistent with rules adopted by the  
4 Pollution Control Board for the administration and  
5 enforcement of Section 58.9 of this Act.

6 (4) A copy of the Department of Commerce and  
7 Community Affairs' letter approving eligibility,  
8 including the net economic benefit of the remediation  
9 project.

10 (5) An itemization and documentation, including  
11 receipts, of the remediation costs incurred.

12 (6) A demonstration that the costs incurred are  
13 remediation costs as defined in this Act and rules  
14 adopted under this Act.

15 (7) A demonstration that the costs submitted for  
16 review were incurred by the Remediation Applicant who  
17 received approval of the Remediation Action Plan.

18 (8) An application fee in the amount set forth in  
19 subdivision (B)(j) for each site for which review of  
20 remediation costs is requested.

21 (9) Any other information deemed appropriate by the  
22 Agency.

23 (g) For a Remediation Applicant seeking a payment under  
24 subdivision (B)(f), until the Agency issues a No Further  
25 Remediation Letter for the site, no more than 75% of the  
26 allowed payment may be claimed by the Remediation Applicant.  
27 The remaining 25% may be claimed following the issuance by  
28 the Agency of a No Further Remediation Letter for the site.  
29 For a Remediation Applicant seeking a payment under  
30 subdivision (B)(e), until the Agency issues a No Further  
31 Remediation Letter for the site, no payment may be claimed by  
32 the Remediation Applicant.

33 (h)(1) Within 60 days after receipt by the Agency of  
34 an application meeting the requirements of subdivision

1 (B)(e) or (B)(f), the Agency must issue a letter to the  
2 applicant approving, disapproving, or modifying the  
3 remediation costs submitted in the application. If an  
4 application is disapproved or approved with modification  
5 of remediation costs, then the Agency's letter must set  
6 forth the reasons for the disapproval or modification.

7 (2) If a preliminary review of a budget plan has  
8 been obtained under subdivision (B)(i), the Remediation  
9 Applicant may submit, with the application and supporting  
10 documentation under subdivision (B)(e) or (B)(f), a copy  
11 of the Agency's final determination accompanied by a  
12 certification that the actual remediation costs incurred  
13 for the development and implementation of the Remedial  
14 Action Plan are equal to or less than the costs approved  
15 in the Agency's final determination on the budget plan.  
16 The certification must be signed by the Remediation  
17 Applicant and notarized. Based on that submission, the  
18 Agency is not required to conduct further review of the  
19 costs incurred for development and implementation of the  
20 Remedial Action Plan and may approve costs as submitted.

21 (3) Within 35 days after receipt of an Agency  
22 letter disapproving or modifying an application for  
23 approval of remediation costs, the Remediation Applicant  
24 may appeal the Agency's decision to the Board in the  
25 manner provided for the review of permits in Section 40  
26 of this Act.

27 (i)(1) A Remediation Applicant may obtain a  
28 preliminary review of estimated remediation costs for the  
29 development and implementation of the Remedial Action  
30 Plan by submitting a budget plan along with the Remedial  
31 Action Plan. The budget plan must be set forth on forms  
32 prescribed and provided by the Agency and must include,  
33 but is not limited to, line item estimates of the costs  
34 associated with each line item (such as personnel,

1 equipment, and materials) that the Remediation Applicant  
2 anticipates will be incurred for the development and  
3 implementation of the Remedial Action Plan. The Agency  
4 must review the budget plan along with the Remedial  
5 Action Plan to determine whether the estimated costs  
6 submitted are remediation costs and whether the costs  
7 estimated for the activities are reasonable.

8 (2) If the Remedial Action Plan is amended by the  
9 Remediation Applicant or as a result of Agency action,  
10 the corresponding budget plan must be revised accordingly  
11 and resubmitted for Agency review.

12 (3) The budget plan must be accompanied by the  
13 applicable fee as set forth in subdivision (B)(j).

14 (4) Submittal of a budget plan must be deemed an  
15 automatic 60-day waiver of the Remedial Action Plan  
16 review deadlines set forth in this subsection (B) and  
17 rules adopted under this subsection (B).

18 (5) Within the applicable period of review, the  
19 Agency must issue a letter to the Remediation Applicant  
20 approving, disapproving, or modifying the estimated  
21 remediation costs submitted in the budget plan. If a  
22 budget plan is disapproved or approved with modification  
23 of estimated remediation costs, the Agency's letter must  
24 set forth the reasons for the disapproval or  
25 modification.

26 (6) Within 35 days after receipt of an Agency  
27 letter disapproving or modifying a budget plan, the  
28 Remediation Applicant may appeal the Agency's decision to  
29 the Board in the manner provided for the review of  
30 permits in Section 40 of this Act.

31 (j) The fees for reviews conducted by the Agency under  
32 this subsection (B) are in addition to any other fees or  
33 payments for Agency services rendered pursuant to the Site  
34 Remediation Program and are as follows:

1           (1) The fee for an application for review of  
2           remediation costs is \$1,000 for each site reviewed.

3           (2) The fee for the review of the budget plan  
4           submitted under subdivision (B)(i) is \$500 for each site  
5           reviewed.

6           The application fee and the fee for the review of the  
7           budget plan must be made payable to the State of Illinois,  
8           for deposit into the Brownfields Redevelopment Fund.

9           (k) Moneys in the Brownfields Redevelopment Fund may be  
10           used for the purposes of this Section, including payment for  
11           the costs of administering this subsection (B). Any moneys  
12           remaining in the Brownfields Site Restoration Program Fund on  
13           the effective date of this amendatory Act of the 92nd General  
14           Assembly shall be transferred to the Brownfields  
15           Redevelopment Fund. Total payments made to all Remediation  
16           Applicants by the Agency for purposes of this subsection (B)  
17           must not exceed \$1,000,000 in State fiscal year 2002.

18           (l) The Department and the Agency are authorized to  
19           enter into any contracts or agreements that may be necessary  
20           to carry out their duties and responsibilities under this  
21           subsection (B).

22           (m) Within 6 months after January 1, 2002 (the effective  
23           date of Public Act 92-486), the Department of Commerce and  
24           Community Affairs and the Agency must propose rules  
25           prescribing procedures and standards for the administration  
26           of this subsection (B). Within 9 months after receipt of the  
27           proposed rules, the Board shall adopt on second notice,  
28           pursuant to Sections 27 and 28 of this Act and the Illinois  
29           Administrative Procedures Act, rules that are consistent with  
30           this subsection (B). Prior to the effective date of rules  
31           adopted under this subsection (B), the Department of Commerce  
32           and Community Affairs and the Agency may conduct reviews of  
33           applications under this subsection (B) and the Agency is  
34           further authorized to distribute guidance documents on costs

1 that are eligible or ineligible as remediation costs.

2 (Source: P.A. 91-36, eff. 6-15-99; 92-16, eff. 6-28-01.)

3 (415 ILCS 5/58.18 rep.)

4 Section 15. The Environmental Protection Act is amended  
5 by repealing Section 58.18.

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