



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

**HB4154**

Introduced 10/26/2005, by Rep. Robert S. Molaro

#### SYNOPSIS AS INTRODUCED:

415 ILCS 5/39.2

from Ch. 111 1/2, par. 1039.2

Amends the Environmental Protection Act. Authorizes service of notice on the owners of adjacent properties to a proposed pollution control facility site in the manner set forth under certain provisions of the Code of Civil Procedure for service of process (now, notice served either in person or by registered mail, return receipt requested). Sets forth that the owners who are required to be served are the owners appearing on the tax records of the county 60 days prior to the filing of the application for siting approval. Sets forth that service of notice is not a jurisdictional requirement. Provides that the evidence necessary to establish service of notice or the refusal of service of notice is by the preponderance of the evidence. Effective immediately.

LRB094 14668 RSP 49621 b

1 AN ACT concerning safety.

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

4 Section 5. The Environmental Protection Act is amended by  
5 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 of  
9 the municipality, as determined by paragraph (c) of Section 39  
10 of this Act, shall approve or disapprove the request for local  
11 siting approval for each pollution control facility which is  
12 subject to such review. An applicant for local siting approval  
13 shall submit sufficient details describing the proposed  
14 facility to demonstrate compliance, and local siting approval  
15 shall be granted only if the proposed facility meets the  
16 following criteria:

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

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

22 (iii) the facility is located so as to minimize  
23 incompatibility with the character of the surrounding area  
24 and to minimize the effect on the value of the surrounding  
25 property;

26 (iv) (A) for a facility other than a sanitary landfill  
27 or waste disposal site, the facility is located outside the  
28 boundary of the 100 year flood plain or the site is  
29 flood-proofed; (B) for a facility that is a sanitary  
30 landfill or waste disposal site, the facility is located  
31 outside the boundary of the 100-year floodplain, or if the  
32 facility is a facility described in subsection (b) (3) of

1 Section 22.19a, the site is flood-proofed;

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

5 (vi) the traffic patterns to or from the facility are  
6 so designed as to minimize the impact on existing traffic  
7 flows;

8 (vii) if the facility will be treating, storing or  
9 disposing of hazardous waste, an emergency response plan  
10 exists for the facility which includes notification,  
11 containment and evacuation procedures to be used in case of  
12 an accidental release;

13 (viii) if the facility is to be located in a county  
14 where the county board has adopted a solid waste management  
15 plan consistent with the planning requirements of the Local  
16 Solid Waste Disposal Act or the Solid Waste Planning and  
17 Recycling Act, the facility is consistent with that plan;  
18 for purposes of this criterion (viii), the "solid waste  
19 management plan" means the plan that is in effect as of the  
20 date the application for siting approval is filed; and

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

24 The county board or the governing body of the municipality  
25 may also consider as evidence the previous operating experience  
26 and past record of convictions or admissions of violations of  
27 the applicant (and any subsidiary or parent corporation) in the  
28 field of solid waste management when considering criteria (ii)  
29 and (v) under this Section.

30 (b) No later than 14 days before the date on which the  
31 county board or governing body of the municipality receives a  
32 request for site approval, the applicant shall cause, in any  
33 manner authorized under Part 2 of Article II of the Code of  
34 Civil Procedure, written notice of such request to be served  
35 ~~either in person or by registered mail, return receipt~~  
36 ~~requested,~~ on the owners of all property within the subject

1 area not solely owned by the applicant, and on the owners of  
2 all property within 250 feet in each direction of the lot line  
3 of the subject property, said owners being such persons or  
4 entities which, on the date 60 days prior to the filing of the  
5 application, appear from the authentic tax records of the  
6 County in which such facility is to be located; provided, that  
7 the number of all feet occupied by all public roads, streets,  
8 alleys and other public ways shall be excluded in computing the  
9 250 feet requirement; provided further, that in no event shall  
10 this requirement exceed 400 feet, including public streets,  
11 alleys and other public ways.

12 Such written notice shall also be served upon members of  
13 the General Assembly from the legislative district in which the  
14 proposed facility is located and shall be published in a  
15 newspaper of general circulation published in the county in  
16 which the site is located.

17 Such notice shall state the name and address of the  
18 applicant, the location of the proposed site, the nature and  
19 size of the development, the nature of the activity proposed,  
20 the probable life of the proposed activity, the date when the  
21 request for site approval will be submitted, and a description  
22 of the right of persons to comment on such request as hereafter  
23 provided. Service of notice as provided in this subsection (b)  
24 is not a jurisdictional requirement.

25 Notice is deemed served as required in this subsection (b)  
26 if it is established by a preponderance of the evidence that  
27 the owner received service of notice in any manner authorized  
28 under Part 2 of Article II of the Code of Civil Procedure, or  
29 if it is established by a preponderance of the evidence that  
30 the owner refused to receive service of notice.

31 (c) An applicant shall file a copy of its request with the  
32 county board of the county or the governing body of the  
33 municipality in which the proposed site is located. The request  
34 shall include (i) the substance of the applicant's proposal and  
35 (ii) all documents, if any, submitted as of that date to the  
36 Agency pertaining to the proposed facility, except trade

1 secrets as determined under Section 7.1 of this Act. All such  
2 documents or other materials on file with the county board or  
3 governing body of the municipality shall be made available for  
4 public inspection at the office of the county board or the  
5 governing body of the municipality and may be copied upon  
6 payment of the actual cost of reproduction.

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

13 (d) At least one public hearing is to be held by the county  
14 board or governing body of the municipality no sooner than 90  
15 days but no later than 120 days after the date on which it  
16 received the request for site approval. No later than 14 days  
17 prior to such hearing, notice shall be published in a newspaper  
18 of general circulation published in the county of the proposed  
19 site, and delivered by certified mail to all members of the  
20 General Assembly from the district in which the proposed site  
21 is located, to the governing authority of every municipality  
22 contiguous to the proposed site or contiguous to the  
23 municipality in which the proposed site is to be located, to  
24 the county board of the county where the proposed site is to be  
25 located, if the proposed site is located within the boundaries  
26 of a municipality, and to the Agency. Members or  
27 representatives of the governing authority of a municipality  
28 contiguous to the proposed site or contiguous to the  
29 municipality in which the proposed site is to be located and,  
30 if the proposed site is located in a municipality, members or  
31 representatives of the county board of a county in which the  
32 proposed site is to be located may appear at and participate in  
33 public hearings held pursuant to this Section. The public  
34 hearing shall develop a record sufficient to form the basis of  
35 appeal of the decision in accordance with Section 40.1 of this  
36 Act. The fact that a member of the county board or governing

1 body of the municipality has publicly expressed an opinion on  
2 an issue related to a site review proceeding shall not preclude  
3 the member from taking part in the proceeding and voting on the  
4 issue.

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

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

29 If, prior to making a final local siting decision, a county  
30 board or governing body of a municipality has negotiated and  
31 entered into a host agreement with the local siting applicant,  
32 the terms and conditions of the host agreement, whether written  
33 or oral, shall be disclosed and made a part of the hearing  
34 record for that local siting proceeding. In the case of an oral  
35 agreement, the disclosure shall be made in the form of a  
36 written summary jointly prepared and submitted by the county

1 board or governing body of the municipality and the siting  
2 applicant and shall describe the terms and conditions of the  
3 oral agreement.

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

22 (f) A local siting approval granted under this Section  
23 shall expire at the end of 2 calendar years from the date upon  
24 which it was granted, unless the local siting approval granted  
25 under this Section is for a sanitary landfill operation, in  
26 which case the approval shall expire at the end of 3 calendar  
27 years from the date upon which it was granted, and unless  
28 within that period the applicant has made application to the  
29 Agency for a permit to develop the site. In the event that the  
30 local siting decision has been appealed, such expiration period  
31 shall be deemed to begin on the date upon which the appeal  
32 process is concluded.

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

1           If a first development permit for a municipal waste  
2 incineration facility expires under subsection (k) of Section  
3 39 after September 30, 1989 due to circumstances beyond the  
4 control of the applicant, any associated local siting approval  
5 granted for the facility under this Section may be used to  
6 fulfill the local siting approval requirement upon application  
7 for a second development permit for the same site, provided  
8 that the proposal in the new application is materially the  
9 same, with respect to the criteria in subsection (a) of this  
10 Section, as the proposal that received the original siting  
11 approval, and application for the second development permit is  
12 made before January 1, 1990.

13           (g) The siting approval procedures, criteria and appeal  
14 procedures provided for in this Act for new pollution control  
15 facilities shall be the exclusive siting procedures and rules  
16 and appeal procedures for facilities subject to such  
17 procedures. Local zoning or other local land use requirements  
18 shall not be applicable to such siting decisions.

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

22           (i) (Blank.)

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

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



1 (k) A county board or governing body of a municipality may  
2 charge applicants for siting review under this Section a  
3 reasonable fee to cover the reasonable and necessary costs  
4 incurred by such county or municipality in the siting review  
5 process.

6 (l) The governing Authority as determined by subsection (c)  
7 of Section 39 of this Act may request the Department of  
8 Transportation to perform traffic impact studies of proposed or  
9 potential locations for required pollution control facilities.

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

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

23 In the event the petitioner is a citizens' group that  
24 participated in the siting proceeding and is so located as to  
25 be affected by the proposed facility, such petitioner shall be  
26 exempt from paying the costs of preparing and certifying the  
27 record.

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

34 (Source: P.A. 94-591, eff. 8-15-05.)

35 Section 99. Effective date. This Act takes effect upon

1 becoming law.