



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB0761

Introduced 2/18/2005, by Sen. James F. Clayborne, Jr.

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/5.640 new

Creates the Isolated Wetlands Protection Act. Provides that subject to certain conditions no person may conduct or cause to be conducted a regulated activity within or affecting an isolated wetland in such a manner that the biologic or hydrologic integrity of the isolated wetland is impaired except in accordance with the terms of an individual permit issued by the Agency or authorized by the Agency. Sets forth various conditions and requirements of permits and classifications of isolated wetlands. Provides for the formation of an Illinois Wetlands Advisory Committee. Authorizes judicial review of classifications of isolated wetlands or denial of permits after review by the Pollution Control Board. Authorizes the Agency to investigate violations of the Act and to pursue enforcement under certain procedures of the Environmental Protection Act. Sets forth certain fees for permits. Preempts home rule in certain circumstances. Provides that Sections of the Act are severable. Amends the State Finance Act to create the Isolated Wetlands Management Fund. Effective immediately.

LRB094 10143 RSP 40405 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning isolated wetlands.

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 Isolated Wetlands Protection Act.

6 Section 10. Definitions. For the purposes of this Act:

7 "ADID" means those aquatic sites identified by the United
8 States Environmental Protection Agency and the United States
9 Corps of Engineers as areas generally unsuitable for disposal
10 of dredged or fill material in accordance with 40 C.F.R. Part
11 230.80.

12 "Affected property" means any property upon which a
13 regulated activity is conducted.

14 "Agency" means the Illinois Environmental Protection
15 Agency.

16 "Avoidance" means any action taken in a manner such that a
17 regulated activity will not occur.

18 "Board" means the Illinois Pollution Control Board.

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

23 "Commencing such a regulated activity" means any steps
24 taken in preparation for conducting a regulated activity that
25 may impact the affected property, such as cutting, filling,
26 pumping of water, and earth movement.

27 "Committee" means the Illinois Isolated Wetlands Advisory
28 Committee.

29 "Contiguous" means an isolated wetland that is delineated
30 to have greater than 1/10 acre on the affected property and
31 extends beyond the boundary of that property.

32 "Converted wetland" means a wetland that has been drained,

1 dredged, filled, leveled, or otherwise manipulated (including
2 the removal of woody vegetation or any activity that results in
3 impairing or reducing the flow and circulation of water) for
4 the purpose of or to have the effect of making possible the
5 production of an agricultural commodity without further
6 application of the manipulations described herein if: (i) such
7 production would not have been possible but for that action,
8 and (ii) before that action the land was wetland, farmed
9 wetland, or farmed-wetland pasture and was neither highly
10 erodible land nor highly erodible cropland.

11 "Corps of Engineers" or "COE" means the United States Army
12 Corps of Engineers.

13 "Cypress swamp" means forested, permanent or
14 semi-permanent bodies of water, with species assemblages
15 characteristic of the Gulf and Southeastern Coastal Plains and
16 including bald cypress, and which are restricted to extreme
17 southern Illinois.

18 "Director" means the Director of the Illinois
19 Environmental Protection Agency.

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

22 "Floristic quality index" means an index calculated using
23 the Floristic Quality Assessment Method of assessing floristic
24 integrity or quality.

25 "Incidental fallback" means the redeposit of small volumes
26 of dredged material that is incidental to excavation activity
27 in an isolated wetland when such material falls back to
28 substantially the same place as the initial removal.

29 "Incidentally created" means created as a result of any
30 normal or routine activity coincidental with the conduct of
31 legitimate business enterprises, except that a wetland or
32 depression created as mitigation for any activity affecting
33 isolated wetlands is not "incidentally created".

34 "Isolated wetlands" means those areas that are inundated or
35 saturated by surface or ground water at a frequency or duration
36 sufficient to support, and that under normal circumstances do

1 support, a prevalence of vegetation typically adapted for life
2 in saturated soil conditions, and that are not regulated under
3 the federal Clean Water Act (33 U.S.C. §§ 1251-1387).

4 "Panne" means wet interdunal flats located near Lake
5 Michigan.

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

11 "Plant" means any member of the plant kingdom, including
12 seeds, roots, and other parts thereof.

13 "Prior converted cropland" means a converted wetland where
14 the conversion occurred prior to December 23, 1985, an
15 agricultural commodity has been produced at least once before
16 December 23, 1985, and as of December 23, 1985, the converted
17 wetland did not support woody vegetation and met the following
18 hydrologic criteria: (i) inundation was less than 15
19 consecutive days during the growing season or 10 percent of the
20 growing season, whichever is less, in most years (50 percent
21 chance or more); and (ii) if a pothole, playa, or pocosin,
22 ponding was less than 7 consecutive days during the growing
23 season in most years (50 percent chance or more) and saturation
24 was less than 14 consecutive days during the growing season
25 most years (50 percent chance or more).

26 "Regulated activity" means the discharge of dredged or fill
27 material into an isolated wetland, the drainage of an isolated
28 wetland, or the excavation of an isolated wetland that results
29 in more than incidental fallback.

30 "Species" includes any subspecies of fish or wildlife or
31 plants, and any distinct population segment of any species of
32 vertebrate fish or wildlife which interbreeds when mature.

33 "Threatened or endangered species" means those species
34 that have been designated as threatened or endangered by the
35 Illinois Endangered Species Protection Board pursuant to the
36 Illinois Endangered Species Protection Act and those species

1 that have been designated as threatened or endangered by the
2 U.S. Fish and Wildlife Service pursuant to the Endangered
3 Species Act (35 U.S.C §§ 1531-1544).

4 "Upland" means non-wetland, when used to describe a
5 particular land use, or non-hydric, when used to describe a
6 soil type.

7 "Wetlands" means those areas that are inundated or
8 saturated by surface or ground water at a frequency or duration
9 sufficient to support, and that under normal circumstances do
10 support, a prevalence of vegetation typically adapted for life
11 in saturated soil conditions, and that are regulated under the
12 federal Clean Water Act.

13 Section 15. Exemptions.

14 (a) As long as they do not have as their purpose bringing
15 an isolated wetland into a use to which it was not previously
16 subject, the following are not prohibited by or otherwise
17 subject to regulation under this Act:

18 (1) Normal farming, silviculture, and ranching
19 activities such as plowing, seeding, cultivating, minor
20 drainage, harvesting for the production of food, fiber, and
21 forest products, or upland soil and water conservation
22 practices.

23 (2) Maintenance, including emergency reconstruction of
24 recently damaged parts, of currently serviceable
25 structures such as dikes, dams, levees, groins, riprap,
26 breakwaters, causeways, and bridge abutments or
27 approaches, and transportation structures.

28 (3) Construction or maintenance of farm or stock ponds
29 or irrigation ditches, or the maintenance of drainage
30 ditches.

31 (4) Construction of temporary sedimentation basins on
32 a construction site that does not include any regulated
33 activities within an isolated wetland.

34 (5) Construction or maintenance of farm roads or forest
35 roads, or temporary roads for moving mining equipment,

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

8 (6) Unless they are to be conducted in Class I or II
9 Isolated Wetlands, activities for the placement of pilings
10 for linear projects such as bridges, elevated walkways, and
11 power line structures.

12 (7) Installation and maintenance of signs, lighting,
13 and fences and the mowing of vegetation within existing
14 maintained rights-of-way.

15 (8) Repair and maintenance of existing buildings,
16 facilities, lawns, and ornamental plantings.

17 (9) Construction projects that have obtained the
18 necessary building permits from applicable local
19 jurisdictions prior to the effective date of this Act.

20 (10) Application of media, including deicing media, on
21 the surface of existing roads for purposes of public
22 safety.

23 (11) Avoidance activities such as directional drilling
24 to avoid impacts to isolated wetlands.

25 (12) Non-surface disturbing surveys and investigations
26 for the construction, planning, maintenance, or location
27 of environmental resources.

28 (13) Wetland management practices on lands that are
29 used primarily for the management of waterfowl, other
30 migratory water birds, or furbearers if such practices took
31 place on the lands prior to the effective date of this Act.
32 This includes vegetation management that may include the
33 use of fire, chemical, or mechanical (hydro-axe,
34 bulldozer, rock disk, or similar equipment) removal of
35 invading woody or herbaceous vegetation to maintain a
36 preferred successional stage. The use of chemicals must be

1 by a certified applicator and the chemicals must be
2 registered for appropriate use.

3 Clearing or removal of woody vegetation shall be
4 limited to 4 inch dbh or smaller material for the purpose
5 of establishing or maintaining the successional stage of a
6 wetland as a herbaceous wetland vegetated by native moist
7 soil plants or selected wildlife food plants.

8 (b) Any exemption authorized by and pertaining to wetlands
9 that are subject to regulation under the federal Clean Water
10 Act, or regulations promulgated thereunder, shall also be an
11 exemption for the purposes of this Act.

12 (c) The following are not isolated wetlands for purposes of
13 this Act:

14 (1) Waste treatment systems, including treatment ponds
15 or lagoons designed to comply with water quality standards
16 of the State or to remediate a site in accordance with an
17 approved Agency program, and former waste treatment
18 systems that have ceased operation less than 33 years
19 before the date the permit application is received by the
20 Agency or that are undergoing remediation in accordance
21 with an approved Agency program.

22 (2) A drainage or irrigation ditch.

23 (3) An artificially irrigated area that would revert to
24 upland if the irrigation ceased.

25 (4) An artificial lake or pond created by excavating or
26 diking upland to collect and retain water for the primary
27 purpose of stock watering, irrigation, wildlife, fire
28 control, ornamentation or landscaping, or as a settling
29 pond.

30 (5) An incidentally created water-filled depression,
31 unless: (i) the ownership of the property containing the
32 depression has been transferred away from the party who
33 incidentally created the water-filled depression, the
34 ownership transfer occurred more than 12 months prior to
35 the commencement of an otherwise regulated activity, the
36 use of the property has changed from the use that existed

1 when the property was transferred from the party who
2 incidentally created the water-filled depression, and the
3 resulting body of water meets the definition in this Act of
4 a wetland, or (ii) the ownership of the property has not
5 been transferred from the party who created the
6 incidentally created water-filled depression, and the
7 depression was not created more than 33 years before the
8 date the permit application is received by the Agency, or
9 (iii) the incidently created water-filled depression was
10 created by mining activities regulated in accordance with
11 subdivision (c) (7) of this Section.

12 (6) Stormwater or spill management systems, including
13 retention and detention basins, ditches and channels, and
14 former stormwater or spill management systems that have
15 ceased operation less than 33 years before the date the
16 permit application is received by the Agency or are
17 undergoing remediation in accordance with an approved
18 Agency program.

19 (7) Waters that undergo mining activities conducted
20 pursuant to a federal, State, regional, or local permit
21 that requires the reclamation of the affected wetlands, if
22 the reclamation will be completed within a reasonable
23 period of time after the completion of the mining
24 activities at the site and, upon completion of the
25 reclamation, the wetlands will support functions generally
26 equivalent to the functions supported by the wetlands at
27 the time of the commencement of the mining activities.

28 (8) Prior converted cropland.

29 Section 20. Applicability. The requirements of this Act
30 shall apply to all isolated wetlands as that term is defined in
31 this Act. In the event that an isolated wetland ceases to meet
32 this definition because it becomes subject to regulation under
33 the federal Clean Water Act, such wetland shall no longer be
34 subject to the provisions of this Act.

1 Section 25. Isolated wetland delineation; classification;
2 notification; permits.

3 (a) The requirements of this Section apply beginning on the
4 effective date of the rules required under Section 40 or one
5 year from the effective date of this Act, whichever occurs
6 earlier. The procedures and regulatory criteria for the
7 delineation, classification, notification, and permitting for
8 isolated wetlands shall be conducted in accordance with the
9 provisions of this Section.

10 (b) Any person who intends to conduct a regulated activity
11 within the State may request a determination from the Agency as
12 to the existence, location, and surface area of any isolated
13 wetlands on or contiguous to the affected property. Nothing in
14 this Section shall require the person to seek such a
15 determination; however, failure to seek and obtain a
16 determination shall not be a defense against a violation of
17 this Act.

18 The person seeking a determination must provide the Agency
19 with sufficient information to render a determination.
20 Sufficient information includes a wetland delineation made in
21 accordance with the COE Wetlands Delineation Manual, Technical
22 Report Y-87-1. Delineation of the portion of a contiguous
23 wetland not on the affected property shall be made to the
24 extent reasonably possible, and methods other than physical
25 on-site evaluations shall be considered by the Agency.

26 The Agency shall provide notice to the applicant as to
27 whether a submitted application is complete. Unless the Agency
28 notifies the applicant that the application is incomplete
29 within 15 days of receipt of the application, the application
30 shall be deemed complete. The Agency may request additional
31 information as needed to make the completeness determination.
32 The Agency shall, upon receipt of a complete determination
33 request, provide the person, within 30 days, with a
34 determination as to the existence, location, and surface area
35 of isolated wetlands located on or contiguous to the affected
36 property.

1 If the Agency determines that there are no isolated
2 wetlands on the affected property, any otherwise regulated
3 activity conducted on the property shall not be subject to the
4 provisions of this Act.

5 If the Agency determines that there are one or more
6 isolated wetlands on or contiguous to the affected property,
7 the person may apply to the Agency for classification of those
8 isolated wetlands.

9 Any determination of an isolated wetland by the Agency is a
10 final decision for purposes of appeal to the Board.

11 (c) If any person intends to conduct a regulated activity,
12 the person may, prior to commencing a regulated activity,
13 request that the isolated wetland be classified as Class I, II,
14 III, or IV in accordance with the provisions of this Section.
15 Nothing in this Section shall require the person to seek such a
16 classification; however, any isolated wetland not classified
17 shall be considered Class I for purposes of this Act.

18 The person seeking a classification shall provide the
19 Agency with sufficient information to render a classification.
20 Information shall include a wetland delineation made in
21 accordance with the COE Wetlands Delineation Manual, Technical
22 Report Y-87-1.

23 Unless the Agency notifies the applicant that the
24 application is incomplete within 15 days of receipt of the
25 application, the application shall be deemed complete. The
26 Agency may request additional information as needed to make the
27 completeness determination. The Agency shall, upon receipt of a
28 complete classification request, provide the person, within 30
29 days, with a classification of the isolated wetlands located on
30 or contiguous to the affected property. If the Agency fails to
31 provide the person with a classification within 30 days, the
32 classification requested by the person shall be deemed granted.

33 The Agency shall classify an isolated wetland as:

34 (1) a Class I Isolated Wetland, if and only if:

35 (A) the isolated wetland is or encompasses a bog;

36 (B) the isolated wetland is or encompasses a fen;

1 (C) the isolated wetland is or encompasses a panne;

2 (D) the isolated wetland is or encompasses a
3 cypress swamp; or

4 (E) a threatened or endangered species has been
5 identified in the isolated wetland, provided that an
6 isolated wetland will not be classified as Class I
7 based solely on the presence of an endangered plant if
8 the owner of the isolated wetland authorizes the taking
9 of that plant pursuant to the Illinois Endangered
10 Species Protection Act. "Taking" for the purpose of
11 this item (E) shall have the meaning provided in the
12 Illinois Endangered Species Protection Act and shall
13 include the removal of a plant for transplantation or
14 any other reasonable mitigation measure authorized by
15 the Agency.

16 (2) a Class II Isolated Wetland, if and only if the
17 isolated wetland:

18 (A) is or encompasses an ADID site; or

19 (B) has a Floristic Quality Index (FQI) that is
20 equal to or greater than 20 or a mean coefficient of
21 conservatism (Mean C) equal to or greater than 3.5,
22 determined in accordance with rules adopted by the
23 Agency.

24 (3) a Class III Isolated Wetland, if and only if the
25 isolated wetland is not a Class I, Class II, or a Class IV
26 wetland.

27 (4) a Class IV Isolated Wetland, if and only if:

28 (A) the wetland is not a Class I or Class II
29 Isolated Wetland, and

30 (B) the total size of the isolated wetland,
31 including contiguous areas, is less than one-half
32 acre.

33 Any classification of an isolated wetland by the Agency is
34 a final decision for purposes of appeal to the Board.

35 (d) Subject to the provisions of Section 35 regarding
36 general permits, no person may conduct or cause to be conducted

1 a regulated activity within or affecting an isolated wetland in
2 such a manner that the biologic or hydrologic integrity of the
3 isolated wetland is impaired within the scope of this Act,
4 except in accordance with the terms of an individual permit
5 issued by the Agency or an authorization to proceed as
6 applicable under this Section.

7 (1) Class I.

8 (A) A permit to conduct a regulated activity
9 affecting a Class I isolated wetland within the scope
10 of this Act shall be granted if documentation is
11 submitted that demonstrates that avoidance of impacts
12 to the Class I isolated wetland precludes the
13 reasonable economic use of the entire parcel and that
14 no practicable alternative to wetland modification
15 exists.

16 (B) No permit under this item (1) may be issued by
17 the Agency without a public notice and the opportunity
18 for a public hearing being afforded. In the event that
19 an affected party requests a public hearing, a public
20 hearing must be held.

21 (C) A permit issued under this subdivision (d) (1)
22 shall require the mitigation of wetland losses at a
23 ratio provided by the Agency, but not to exceed 3:1.
24 Authorized wetland losses shall be mitigated in kind
25 and within the same watershed as the impacted area,
26 restoring, to the maximum degree practicable as
27 determined by the Agency, both the type and functions
28 of the isolated wetland that will be affected by the
29 regulated activity. When the type and functions of the
30 isolated wetland that will be affected by the activity
31 cannot be adequately restored to the maximum degree
32 practicable by the ratio allowed in this paragraph (C),
33 the Agency may, on a case-by-case basis, increase this
34 ratio based on site-specific criteria to be developed
35 by rules. Such mitigation shall be consistent with
36 rules adopted by the Board and may consist of actual

1 replacement or participation in a mitigation banking
2 program or other compensation program approved by the
3 Agency.

4 (2) Class II.

5 (A) A permit to conduct a regulated activity
6 affecting a Class II isolated wetland within the scope
7 of this Act shall be granted if documentation is
8 submitted that demonstrates that no practicable
9 alternative to the isolated wetland modification
10 exists.

11 (B) No permit under this item (2) may be issued by
12 the Agency without a public notice and the opportunity
13 for a public hearing being afforded. In the event that
14 an affected party requests a public hearing a public
15 hearing must be held.

16 (C) A permit issued under this subdivision (d) (2)
17 shall require the mitigation of wetland losses at a
18 ratio provided by the Agency, but not to exceed 2.5:1.
19 Authorized wetland losses shall be mitigated in kind
20 and within the same watershed as the impacted area,
21 restoring, to the maximum degree practicable as
22 determined by the Agency, both the type and functions
23 of the isolated wetland that will be affected by the
24 regulated activity. When the type and functions of the
25 isolated wetland that will be affected by the activity
26 cannot be adequately restored to the maximum degree
27 practicable by the ratio allowed in this paragraph (C),
28 the Agency may, on a case-by-case basis, increase this
29 ratio based on site-specific criteria to be developed
30 by rules. Such mitigation shall be consistent with
31 rules adopted by the Board and may consist of actual
32 replacement or participation in a mitigation banking
33 program or other compensation program approved by the
34 Agency.

35 (3) Class III.

36 (A) A permit to conduct a regulated activity

1 affecting a Class III isolated wetland within the scope
2 of this Act shall be granted if documentation is
3 submitted demonstrating that a minimization plan to
4 minimize or alleviate the impact on the isolated
5 wetland has been developed and applied as reasonably
6 appropriate.

7 (B) No permit under this item (3) may be issued by
8 the Agency without a public notice and the opportunity
9 for a public hearing being afforded. In the event that
10 an affected party requests a public hearing, the Agency
11 may, at its discretion, hold a public hearing on the
12 proposed regulated activity.

13 (C) A permit issued under this subdivision (d) (3)
14 shall require the mitigation of wetland losses at a
15 ratio provided by the Agency, but not to exceed 1:1.
16 Authorized wetland losses shall be mitigated in kind
17 and within the same watershed as the impacted area,
18 restoring, to the maximum degree practicable as
19 determined by the Agency, both the type and functions
20 of the isolated wetland that will be affected by the
21 regulated activity. Such mitigation shall be
22 consistent with rules adopted by the Board and may
23 consist of actual replacement, participation in a
24 mitigation banking program or other compensation
25 programs approved by the Agency, education or research
26 programs, or other appropriate programs.

27 (4) Class IV.

28 (A) No regulated activity covered under this Act
29 that will impact an area that has been classified as a
30 Class IV isolated wetland may be undertaken without
31 prior notification to the Agency.

32 (B) Prior notification shall include (1) a sketch
33 that reasonably depicts the area that will be affected
34 by the regulated activity, including isolated wetland
35 and water boundaries for the areas affected and the
36 existing land uses and structures; (2) a description of

1 the proposed activity, including its purpose; (3) a
2 description of any public benefit to be derived from
3 the proposed project; and (4) the names and addresses
4 of adjacent landowners as determined by the current tax
5 assessment rolls.

6 (C) Upon receipt of a notification of intent, the
7 Agency shall verify that the regulated activity will
8 affect an isolated wetland that it previously
9 classified as Class IV.

10 If the Agency so verifies, the Agency shall send
11 the person, within 30 days of the receipt of such
12 notification, a response stating that the regulated
13 activity may proceed.

14 If the Agency cannot so verify, the Agency shall
15 send the person, within 30 days of the receipt of such
16 notification, a response stating that no
17 classification has been made by the Agency, or that a
18 Classification of I, II, or III was made and that the
19 regulated activity may not proceed until either a
20 classification is made pursuant to this Section, or a
21 permit is obtained, as applicable.

22 Failure of the Agency to respond to a notification
23 within the 30 day period shall be deemed an
24 authorization to proceed.

25 (D) No permit shall be required for a regulated
26 activity covered under this Act that will impact an
27 area classified as a Class IV isolated wetland.

28 (e) Within 15 days of the receipt of a permit application,
29 the Agency shall determine if the application is complete. To
30 be deemed complete, an application must provide all
31 information, as requested in Agency application forms,
32 sufficient to evaluate the application. This information shall
33 include, at a minimum: (1) a sketch that reasonably depicts the
34 area that will be affected by the regulated activity, including
35 wetland and water boundaries for the areas affected and the
36 existing land uses and structures; (2) a description of the

1 proposed activity, including its purpose; (3) a description of
2 any public benefit to be derived from the proposed project; and
3 (4) the names and addresses of adjacent landowners as
4 determined by the current tax assessment rolls. The information
5 shall also include a wetland delineation made in accordance
6 with the COE Wetlands Delineation Manual, Technical Report
7 Y-87-1.

8 The Agency application forms shall be finalized and made
9 available prior to the date on which any application is
10 required. The Agency must provide notice to the applicant as to
11 whether a submitted application is complete. Unless the Agency
12 notifies the applicant that the application is incomplete
13 within 15 days of receipt of the application, the application
14 shall be deemed complete. The Agency may request additional
15 information as needed to make the completeness determination.
16 The Agency may, to the extent practicable, provide the
17 applicant with a reasonable opportunity to correct
18 deficiencies prior to a final determination of completeness.
19 Within 90 days from the receipt of a complete application for
20 permit, the Agency shall issue, deny, or issue with conditions
21 a permit. If a public hearing is held on the application,
22 however, this period shall be extended by 45 days.

23 (f) The Agency shall not issue a permit pursuant to this
24 Section unless the Agency has certified that the proposed
25 activity will not cause or contribute to a violation of any
26 State water quality standard. The Agency shall be deemed to
27 have certified that the proposed activity will not cause or
28 contribute to a violation of any State water quality standard
29 if it has not notified the applicant in writing within 80 days
30 of the filing of the application that the proposed activity
31 will violate a State water quality standard, unless the Agency
32 has requested that the applicant supply more information
33 relevant to assessing the water quality impacts of the proposed
34 activity.

35 (g) Any person may submit concurrent requests for
36 determination and delineation, classification, and a permit

1 application or provision of notification. The Agency shall act
2 on such combined requests concurrently in accordance with
3 expedited permitting procedures proposed by the Agency and
4 adopted by the Board.

5 (h) Any person may submit an application for an
6 after-the-fact permit to be issued under this Act, and the
7 Agency is authorized to issue such an after-the-fact permit if
8 it determines that the activities covered by the after-the-fact
9 permit application were undertaken and conducted in response to
10 emergency circumstances under which there was an imminent
11 threat to persons, public infrastructure, personal property,
12 or uninterrupted utility service that previously made it
13 impracticable for the applicant to obtain prior authorization
14 under this Act to undertake and conduct the activities. The
15 applicant shall be required to demonstrate that it provided
16 notice to the Agency of the emergency circumstances as soon as
17 reasonably possible following the discovery of those
18 circumstances.

19 (i) The Board shall adopt rules to carry out the provisions
20 of this Section in accordance with Section 40 of this Act.

21 Section 30. Surety. The Board may provide by rule for any
22 requirements regarding bonds or letters of credit in favor of
23 the State, including conditions sufficient to secure
24 compliance with the conditions and limitations of a permit.

25 Section 35. General Permits.

26 (a) Notwithstanding Section 25, any person who intends to
27 conduct a regulated activity within the State may do so in
28 accordance with a general permit issued by the Agency under
29 this Section.

30 (b) Permits for all categories of activities, subject to
31 the same permit limitations and conditions, that are the
32 subject of a nationwide permit issued by the COE, in effect on
33 the date of the enactment of this Act, are adopted as general
34 permits covering regulated activities subject to this Act.

1 (c) The Agency may adopt general permits covering other
2 activities that would be subject to the same permit limitations
3 and conditions, if it determines that the activities in such a
4 category will cause only minimal adverse environmental effects
5 when performed separately, will have only minimal cumulative
6 adverse effect on the environment, will not cause or contribute
7 to a violation of State water quality standards when performed
8 separately, and will have only a minimal cumulative adverse
9 effect on water quality. The Agency may prescribe best
10 management practices for any general permit issued under this
11 Section. The Agency shall consider any optional mitigation
12 proposed by an applicant in determining whether the net adverse
13 environmental effects of a proposed regulated activity are
14 minimal.

15 The Agency must adopt a general permit for:

16 (1) the construction or maintenance of access roads for
17 utility lines, substations, or related equipment or
18 facilities; and

19 (2) activities for the purpose of preserving and
20 enhancing aviation safety or to prevent an airport hazard.

21 (d) No general permit adopted under this Section shall be
22 for a period of more than 5 years after the date of its
23 adoption. A general permit may be revoked or modified by the
24 Agency if, after opportunity for public hearing, the Agency
25 determines that the activities authorized by the general permit
26 have an adverse impact on the environment, cause or contribute
27 to a violation of state water quality standards, or are more
28 appropriately authorized by individual permits.

29 (e) Compliance with the terms of a general permit shall be
30 deemed compliance with the provisions of this Act if the
31 applicant (i) files a notice of intent to be covered under the
32 provisions of the general permit in accordance with regulations
33 adopted pursuant to this Act and (ii) files any reports
34 required by the general permit.

35 (f) The Agency must respond to a notice of intent to
36 proceed under a general permit issued under this Section within

1 30 days after the Agency receives the notice. In the event that
2 the Agency fails to respond to a notice of intent to proceed
3 under a general permit within 30 days, the person submitting
4 the notice shall be deemed fully authorized to conduct the
5 activities described in the notice under the terms and
6 conditions of the applicable general permit.

7 Section 40. Illinois Isolated Wetlands Advisory Committee;
8 duties; rules.

9 (a) There is hereby established an Illinois Isolated
10 Wetlands Advisory Committee, which shall consist of 13 members
11 appointed by the Governor. The Committee shall include 5
12 members selected from recommendations provided by the
13 following organizations:

- 14 (1) the Illinois State Chamber of Commerce,
- 15 (2) the Illinois Association of Realtors,
- 16 (3) the Chemical Industry Council of Illinois,
- 17 (4) the American Council of Engineering Companies of
18 Illinois,
- 19 (5) the Illinois Association of Aggregate Producers,
- 20 (6) the Home Builders Association of Illinois,
- 21 (7) the Illinois Energy Association,
- 22 (8) the Illinois Manufacturers' Association,
- 23 (9) the National Solid Waste Management Association,
- 24 and
- 25 (10) the Illinois Farm Bureau.

26 The Committee shall include 3 members selected from the
27 membership of environmental and conservation groups operating
28 in this State.

29 The Committee shall include 2 persons representing
30 counties exercising authority under Section 5-1062 or Section
31 5-1062.1 of the Counties Code to establish stormwater
32 management programs.

33 The Committee shall include 3 other members as determined
34 by the Governor. Members of the Committee may organize
35 themselves as they deem necessary and shall serve without

1 compensation.

2 (b) The Committee shall review, evaluate, and make
3 recommendations (i) regarding State laws, rules, and
4 procedures that relate to this Act and (ii) relating to the
5 State's efforts to implement this Act.

6 (c) Within 6 months after the effective date of this Act,
7 the Agency, after consideration of the recommendations of the
8 Committee, shall propose to the Board any rules required by
9 this Act prescribing procedures and standards for its
10 administration. Within 6 months of the proposal of such rules
11 to the Board, the Board shall adopt, pursuant to Sections 27
12 and 28 of the Environmental Protection Act and any rules
13 adopted thereunder, rules that are consistent with this Act.
14 Nothing in this Act shall preclude, at any time, the
15 recommendation, proposal, or adoption of any other rules deemed
16 necessary for the orderly implementation of this Act.

17 Section 45. Appeal of final Agency decision; judicial
18 review.

19 (a) If the Agency rejects a proposed determination and
20 delineation, refuses to approve a classification, approves a
21 classification other than that supplied by the applicant, or
22 refuses to grant or grants with conditions a permit under
23 Sections 25 or 35 of this Act, the applicant may, within 35
24 days, petition for a hearing before the Board to contest the
25 decision of the Agency. However, the 35-day period for
26 petitioning for a hearing may be extended by the applicant for
27 a period of time not to exceed 90 days by written notice
28 provided to the Board from the applicant and the Agency within
29 the initial period. The applicant and the Agency must jointly
30 file a request for extension within 35 days after the date of
31 service of the Agency's final decision. The joint request may
32 seek an appeal period not exceeding 125 days from the date of
33 service of the Agency's final decision to file a petition for
34 review under this Section. The Board shall publish notice in a
35 newspaper of general circulation in the county where the

1 regulated activity at issue is located for a period of 21 days.
2 The Agency shall appear as respondent in the hearing. At the
3 hearing the rules prescribed in Section 32 and subsection (a)
4 of Section 33 of the Environmental Protection Act shall apply
5 and the burden of proof shall be on the petitioner.

6 (b) The applicant or the Agency, when adversely affected by
7 a final order or determination of the Board, may obtain
8 judicial review by filing a petition for review within 35 days
9 from the date that a copy of the order or other final action
10 sought to be reviewed was served upon the party affected by the
11 order or other final Board action complained of, under the
12 provisions of the Illinois Administrative Procedure Act, as
13 amended, and the rules adopted pursuant thereto, except that
14 review shall be afforded directly in the Appellate Court for
15 the District in which the cause of action arose and not in the
16 Circuit Court.

17 Section 50. Investigation; enforcement.

18 (a) In accordance with constitutional limitations, the
19 Agency shall have authority to enter at all reasonable times
20 upon any private or public property for the purpose of
21 inspecting and investigating to ascertain possible violations
22 of this Act or of rules adopted hereunder, or of permits or
23 terms or conditions thereof.

24 (b) The Illinois Environmental Protection Agency shall
25 conduct investigations and pursue enforcement of alleged
26 violations of this Act, any regulation promulgated hereunder,
27 or any permit granted by the Agency, or any term or condition
28 of any such permit as prescribed in Section 30 and subsections
29 (a), (b) and (c) of Section 31 of the Environmental Protection
30 Act and any rules adopted thereunder.

31 (c) The Agency shall have the duty to administer the permit
32 and certification systems that may be established by this Act
33 or by rules adopted hereunder.

34 (d) In hearings before the Board to enforce provisions of
35 this Act, the burden shall be on the Agency to show either that

1 the respondent has violated or threatened to violate a
2 provision of this Act or a rule adopted hereunder, or a permit
3 or a term or condition thereof. If such proof has been made,
4 the burden shall be on the respondent to show that compliance
5 with the Board's rules would impose an arbitrary or
6 unreasonable hardship.

7 (e) Hearings in enforcement proceedings shall be held in
8 accordance with Section 32 of the Environmental Protection Act
9 and any rules adopted under this Act.

10 (f) Board determinations and orders shall be made in
11 accordance with Section 33 of the Environmental Protection Act
12 and any rules adopted under this Act.

13 (g) The civil penalties provided for in this Section may be
14 recovered in a civil action which may be instituted in a court
15 of competent jurisdiction or by a determination or order of the
16 Board. The State's Attorney of the county in which the alleged
17 violation occurred, or the Attorney General, may, at the
18 request of the Agency, or on his or her own motion, institute a
19 civil action in a court of competent jurisdiction to recover
20 civil penalties and an injunction to restrain violations of
21 this Act.

22 (h) Any person who violates any provision of this Act or
23 any rule adopted hereunder, or any permit or term or condition
24 thereof, or who violates any determination or order of the
25 Board pursuant to this Act, shall be liable for a civil penalty
26 not to exceed \$10,000 per day of violation; these penalties
27 may, upon order of the Board or a court of competent
28 jurisdiction, be made payable to the Environmental Protection
29 Trust Fund, to be used in accordance with the provisions of the
30 Environmental Protection Trust Fund Act.

31 (i) In determining the appropriate civil penalty to be
32 imposed under this Section, the Board is authorized to consider
33 any matters of record in mitigation or aggravation of penalty,
34 including but not limited to the following factors:

35 (1) The duration and gravity of the violation.

36 (2) The presence or absence of due diligence on the

1 part of the person in attempting to comply with
2 requirements of this Act and rules adopted hereunder or to
3 secure relief therefrom as provided by this Act.

4 (3) Any economic benefits accrued by the person because
5 of delay in compliance with requirements.

6 (4) The amount of monetary penalty that will serve to
7 deter further violations by the person and to otherwise aid
8 in enhancing voluntary compliance with this Act by the
9 person and other persons similarly subject to the Act.

10 (5) The number, proximity in time, and gravity of
11 previously adjudicated violations of this Act by the
12 person.

13 (j) Violation of any provision of this Act or any rule
14 adopted hereunder, or any permit or term or condition thereof,
15 or any violation of any determination or order of the Board
16 pursuant to this Act, shall not be deemed a criminal offense.

17 (k) All final orders imposing a civil penalty pursuant to
18 this Section shall prescribe the time for payment of the
19 penalty. If the penalty is not paid within the time prescribed,
20 interest on the penalty at the rate set forth in subsection (a)
21 of Section 1003 of the Illinois Income Tax Act shall be paid
22 for the period from the date payment is due until the date
23 payment is received. However, if the time for payment is stayed
24 during the pendency of an appeal, interest shall not accrue
25 during the stay.

26 Section 55. Fees.

27 (a) Any person seeking a permit, seeking coverage under a
28 general permit, or filing a notification of activities to be
29 conducted on a Class IV isolated wetland from the Agency shall
30 pay a fee to the Agency at the time of filing the application
31 or notification. The following fee amounts shall apply:

32 (1) The fee for a Class I or II isolated wetland is
33 \$400 if the site is less than 1 acre; \$500 if the site is
34 between 1 and 10 acres; \$750 if the site is between 10 and
35 50 acres, and \$1,000 if the site is more than 50 acres. In

1 the event that the Agency is required to review a
2 mitigation plan for a site, an additional fee is required
3 at the time the applicant is notified that such a review is
4 required. The additional mitigation review fee shall be
5 \$750 if the affected isolated wetland is less than 0.5
6 acre; \$1000 if the affected isolated wetland is between 0.5
7 and 2 acres; \$1250 if the affected isolated wetland is
8 between 2.0 and 5.0 acres; and \$1,500 if the affected
9 isolated wetland is greater than 5.0 acres.

10 (2) The fee for a Class III isolated wetland shall be
11 calculated at 50% of the fee charged to a Class I or II
12 isolated wetland.

13 (3) The fee for filing a notice of intent to be covered
14 under a general permit is \$200.

15 (4) The fee for filing a notification of activities to
16 be conducted on a Class IV isolated wetland is \$150.

17 (b) The Agency shall establish procedures for the
18 collection of fees required under this Act.

19 (c) There is hereby created in the State Treasury a special
20 fund to be known as the Isolated Wetlands Management Fund.
21 There shall be deposited into the Fund all moneys received from
22 the fees collected under subsection (a) of this Section.
23 Pursuant to appropriation, moneys from the Fund shall be
24 allocated in amounts deemed necessary to implement this Act.

25 (d) A county that has delegated functions to it under
26 subsection (d) of Section 60 may establish the fees it deems
27 necessary in lieu of using the fee structure in subsection (a).

28 Section 60. Home rule; delegation of authority.

29 (a) A home rule unit may not regulate isolated wetlands
30 except as provided in subsections (b) and (c) of this Section.
31 This Section is a limitation under subsection (i) of Section 6
32 of Article VII of the Illinois Constitution on the concurrent
33 exercise by home rule units of powers and functions exercised
34 by the State.

35 (b) If a county government has implemented an isolated

1 wetlands regulation program prior to March 1, 2003, the county
2 is authorized to regulate isolated wetlands until July 1, 2007.
3 Beginning on July 1, 2007, the limitation in subsection (a) of
4 this Section applies to that county.

5 (c) The provisions of any ordinance or resolution adopted
6 before, on, or after the effective date of this Act by a unit
7 of local government that imposes restrictions or limitations on
8 the identification, classification, notification, permitting,
9 or regulatory criteria for isolated wetlands are invalid,
10 except as authorized by subsection (d) of this Section, and all
11 those existing ordinances and resolutions are declared null and
12 void. This subsection shall not be deemed to be a limitation on
13 any legitimate statutory authority of any unit of local
14 government to regulate flood control or stormwater management,
15 so long as those regulations are not more stringent than the
16 regulations adopted under Section 40 of this Act.

17 (d) The Agency may enter into written delegation agreements
18 with any county government, under which it may delegate all or
19 portions of its inspecting, investigating, and enforcement
20 functions under this Act. In cases where a county government
21 has implemented an isolated wetlands regulation program prior
22 to March 1, 2003, the Agency must, upon the receipt of a
23 request for delegation by such county government, delegate all
24 or portions of its functions under this Act, as requested. The
25 delegation agreements must, at a minimum, require that:

26 (1) All of the administrative procedures and
27 operations performed by the county government shall be
28 performed in exclusive accordance with the provisions of
29 this Act and with rules adopted in accordance with Section
30 40 of this Act.

31 (2) The general permits issued under Section 35 of this
32 Act shall be administered by the county government for
33 those activities covered under the general permits.

34 (3) At the time of filing a permit application or
35 notification with the county government, the person shall
36 file a certification with the Agency attesting to such

1 filing.

2 (4) Within 30 days after the county government takes
3 final action on a permit or notification, a copy of the
4 permit or notification shall be filed with the Agency.

5 (5) Any final action taken by a county government under
6 the delegation agreement may be appealed in accordance with
7 the provisions of Section 45 of this Act.

8 (e) Notwithstanding any other provision of law to the
9 contrary, no unit of local government shall be liable for any
10 injury resulting from the exercise of its authority pursuant to
11 a delegation agreement under this subsection, unless the injury
12 is proximately caused by the willful or wanton negligence of an
13 agent or employee of the unit of local government, and any
14 policy of insurance coverage issued to a unit of local
15 government may provide for the denial of liability and the
16 nonpayment of claims based upon injuries for which the unit of
17 local government is not liable pursuant to this subsection.

18 Section 65. Severability. The provisions of this Act are
19 severable under Section 1.31 of the Statute on Statutes.

20 Section 70. The State Finance Act is amended by adding
21 Section 5.640 as follows:

22 (30 ILCS 105/5.640 new)

23 Sec. 5.640. The Isolated Wetlands Management Fund.

24 Section 99. Effective date. This Act takes effect upon
25 becoming law.