



Sen. Bill Cunningham

Filed: 4/15/2016

09900SB0577sam001

LRB099 02989 MJP 47648 a

1 AMENDMENT TO SENATE BILL 577

2 AMENDMENT NO. _____. Amend Senate Bill 577 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Environmental Protection Act is amended by
5 changing Sections 35, 36, and 38 and by adding Sections 3.547
6 and 38.5 as follows:

7 (415 ILCS 5/3.547 new)

8 Sec. 3.547. Water quality standards variance. "Water
9 quality standards variance" has the meaning ascribed to that
10 term in 40 CFR 131.3(o).

11 (415 ILCS 5/35) (from Ch. 111 1/2, par. 1035)

12 Sec. 35. Variances; general provisions. To the extent
13 consistent with applicable provisions of the Federal Water
14 Pollution Control Act, as now or hereafter amended, the Federal
15 Safe Drinking Water Act (P.L. 93-523), as now or hereafter

1 amended, the Clean Air Act as amended in 1977 (P.L. 95-95), and
2 regulations pursuant thereto, and to the extent consistent with
3 applicable provisions of the Federal Resource Conservation and
4 Recovery Act of 1976 (P.L. 94-580), and regulations pursuant
5 thereto:

6 (a) The Board may grant individual variances beyond the
7 limitations prescribed in this Act, whenever it is found, upon
8 presentation of adequate proof, that compliance with any rule
9 or regulation, requirement or order of the Board would impose
10 an arbitrary or unreasonable hardship. However, the Board is
11 not required to find that an arbitrary or unreasonable hardship
12 exists exclusively because the regulatory standard is under
13 review and the costs of compliance are substantial and certain.
14 In granting or denying a variance the Board shall file and
15 publish a written opinion stating the facts and reasons leading
16 to its decision.

17 (b) The Agency shall grant provisional variances whenever
18 it is found, upon presentation of adequate proof, that
19 compliance on a short term basis with any rule or regulation,
20 requirement or order of the Board, or with any permit
21 requirement, would impose an arbitrary or unreasonable
22 hardship.

23 (c) Except as provided in subsection (b) of Section 38,
24 water quality standards variances shall be governed solely by
25 Section 38.5 of this Act.

26 (Source: P.A. 93-152, eff. 7-10-03.)

1 (415 ILCS 5/36) (from Ch. 111 1/2, par. 1036)

2 Sec. 36. Variances and provisional variances.

3 (a) In granting a variance pursuant to Section 35 of this
4 Act the Board may impose such conditions as the policies of
5 this Act may require. If the hardship complained of consists
6 solely of the need for a reasonable delay in which to correct a
7 violation of this Act or of the Board regulations, the Board
8 shall condition the grant of such variance upon the posting of
9 sufficient performance bond or other security to assure the
10 completion of the work covered by the variance. The Board shall
11 have no authority to delegate to the Agency its powers to
12 require such performance bond. The original amount of such
13 performance bond shall not exceed the reasonable cost of the
14 work to be completed pursuant to the variance. The obligation
15 under such bond shall at no time exceed the reasonable cost of
16 work remaining pursuant to the variance.

17 (b) Except as provided by Section 38 of this Act, any
18 variance granted by the Board pursuant to subsection (a) of
19 Section 35 ~~the provisions of this Section~~ shall be granted for
20 such period of time, not exceeding five years, as shall be
21 specified by the Board at the time of the grant of such
22 variance, and upon the condition that the person who receives
23 such variance shall make such periodic progress reports as the
24 Board shall specify. Such variance may be extended from year to
25 year by affirmative action of the Board, but only if

1 satisfactory progress has been shown.

2 (c) Any provisional variance granted by the Agency pursuant
3 to subsection (b) of Section 35 shall be for a period of time
4 not to exceed 45 days. A provisional variance may be extended
5 up to an additional 45 days by written decision of the Agency.
6 The provisional variances granted to any one person shall not
7 exceed a total of 90 days during any calendar year.

8 (Source: P.A. 93-152, eff. 7-10-03.)

9 (415 ILCS 5/38) (from Ch. 111 1/2, par. 1038)

10 Sec. 38. (a) Except as otherwise provided in subsections
11 ~~subsection~~ (c) and (d), if the Board fails to take final action
12 upon a variance request within 120 days after the filing of the
13 petition or the receipt of a request for hearing pursuant to
14 subsection (a) of Section 37, whichever is later, the
15 petitioner may deem the request granted under this Act, for a
16 period not to exceed one year. However, the period of 120 days
17 shall not run for any such period of time, not to exceed 30
18 days, during which the Board is without sufficient membership
19 to constitute the quorum required by subsection (a) of Section
20 5 of this Act, provided that such 120 day period shall not be
21 stayed for lack of quorum beyond 30 days regardless of whether
22 the lack of quorum exists at the beginning of such 120 day
23 period or occurs during the running of such 120 day period.

24 (b) If any person files a petition for a variance from a
25 rule or regulation pursuant to Section 37 or Section 38.5

1 within 20 days after the effective date of such rule or
2 regulation, the operation of such rule or regulation shall be
3 stayed as to such person pending the disposition of the
4 petition; provided, however, that the operation of any rule or
5 regulation adopted by the Board which implements, in whole or
6 in part, a State RCRA, UIC, or NPDES program shall not be
7 stayed.

8 The Board may hold a hearing upon said petition 5 days from
9 the date of notice of such hearing or thereafter. All the
10 provisions of this Title shall apply to petitions for extension
11 of existing variances and to proposed Contaminant Reduction
12 programs designed to secure delayed compliance with the Act or
13 with Board regulations.

14 (c) Subsection (a) of this Section shall not apply to a
15 request for a variance from any provision of this Act or any
16 rule or regulation adopted by the Board which implements, in
17 whole or in part, a State RCRA, UIC, or NPDES program. If the
18 Board fails to take final action on any request for a variance
19 from any such rule or regulation within 120 days of the filing
20 of the petition, the Petitioner shall be entitled to an
21 Appellate Court order pursuant to Section 41(d) of this Act.

22 (d) Except as provided in subsection (b) of this Section,
23 water quality standards variances shall be governed solely by
24 Section 38.5 of this Act.

25 (Source: P.A. 87-914.)

1 (415 ILCS 5/38.5 new)

2 Sec. 38.5. Water quality standards variances.

3 (a) The Board may adopt water quality standards variances
4 not only beyond any limitation otherwise prescribed in this Act
5 or rules adopted under this Act, but also to the full extent
6 allowed under federal law, including the Federal Water
7 Pollution Control Act, as amended, and rules adopted by the
8 United States Environmental Protection Agency under that Act. A
9 water quality standards variance may be adopted under this
10 Section for a watershed or for one or more bodies of water,
11 body of water segments, or dischargers. This Section shall
12 apply to all petitions for water quality standards variances,
13 even if filed prior to the effective date of this amendatory
14 Act of the 99th General Assembly. Any stay granted under
15 Section 38 of this Act shall continue pending disposition of
16 that petition under this Section.

17 (b) Not later than 6 months after the effective date of
18 this amendatory Act of the 99th General Assembly, the Agency
19 shall propose, and not later than 6 months thereafter the Board
20 shall adopt, rules that prescribe the specific procedures and
21 standards to be used by the Board when adopting water quality
22 standards variances. Nothing shall prohibit the Board from
23 adopting water quality standards variances to the full extent
24 allowed under federal law in the absence of these rules.

25 (c) Each Board-approved water quality standards variance
26 other than an individual water quality standards variance shall

1 set forth criteria that shall be used by the Agency to approve
2 or deny petitions for coverage under that water quality
3 standards variance. Any discharger may petition the Agency to
4 obtain coverage under any Board-approved water quality
5 standards variance other than an individual water quality
6 standards variance; the Agency shall use the Board-established
7 criteria to approve or deny coverage under that variance.

8 (d) For petitions for water quality standards variances
9 filed on or after the effective date of the rules adopted
10 pursuant subsection (b) of this Section, the rules adopted
11 pursuant to subsection (b) shall provide the exclusive
12 procedural and substantive requirements for obtaining a water
13 quality standards variance under this Act.

14 (e) Any person filing a petition for a water quality
15 standards variance under this Section shall pay a filing fee to
16 the Board in the amount required for a petition for variance
17 under Section 7.5 of this Act.

18 Section 99. Effective date. This Act takes effect upon
19 becoming law."