

1 AN ACT concerning the environment.

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

4 Section 5. The State Finance Act is amended by adding  
5 Section 5.545 as follows:

6 (30 ILCS 105/5.545 new)

7 Sec. 5.545. The Brownfields Site Restoration Program  
8 Fund. Subsections (b) and (c) of Section 5 of this Act do  
9 not apply to this Fund.

10 Section 10. The Environmental Protection Act is amended  
11 by changing Sections 58.3 and 58.13 and by adding Section  
12 58.18 as follows:

13 (415 ILCS 5/58.3)

14 Sec. 58.3. Site Investigation and Remedial Activities  
15 Program; Brownfields Redevelopment Fund.

16 (a) The General Assembly hereby establishes by this  
17 Title a Site Investigation and Remedial Activities Program  
18 for sites subject to this Title. This program shall be  
19 administered by the Illinois Environmental Protection Agency  
20 under this Title XVII and rules adopted by the Illinois  
21 Pollution Control Board.

22 (b) (1) The General Assembly hereby creates within the  
23 State Treasury a special fund to be known as the  
24 Brownfields Redevelopment Fund, consisting of 2 programs  
25 to be known as the "Municipal Brownfields Redevelopment  
26 Grant Program" and the "Brownfields Redevelopment Loan  
27 Program", which shall be used and administered by the  
28 Agency as provided in Sections 58.13 and 58.15 of this  
29 Act and the rules adopted under those Sections. The

1           Brownfields Redevelopment Fund ("Fund") shall contain  
2           moneys transferred from the Response Contractors  
3           Indemnification Fund and other moneys made available for  
4           deposit into the Fund.

5           (2) The State Treasurer, ex officio, shall be the  
6           custodian of the Fund, and the Comptroller shall direct  
7           payments from the Fund upon vouchers properly certified  
8           by the Agency. The Treasurer shall credit to the Fund  
9           interest earned on moneys contained in the Fund. The  
10          Agency shall have the authority to accept, receive, and  
11          administer on behalf of the State any grants, gifts,  
12          loans, reimbursements or payments for services, or other  
13          moneys made available to the State from any source for  
14          purposes of the Fund. Those moneys shall be deposited  
15          into the Fund, unless otherwise required by the  
16          Environmental Protection Act or by federal law.

17          (3) Pursuant to appropriation, all moneys in the  
18          Fund shall be used by the Agency for the purposes set  
19          forth in subdivision (b)(4) of this Section and Sections  
20          58.13 and 58.15 of this Act and to cover the Agency's  
21          costs of program development and administration under  
22          those Sections.

23          (4) The Agency shall have the power to enter into  
24          intergovernmental agreements with the federal government  
25          or the State, or any instrumentality thereof, for  
26          purposes of capitalizing the Brownfields Redevelopment  
27          Fund. Moneys on deposit in the Brownfields Redevelopment  
28          Fund may be used for the creation of reserve funds or  
29          pledged funds that secure the obligations of repayment of  
30          loans made pursuant to Section 58.15 of this Act. For  
31          the purpose of obtaining capital for deposit into the  
32          Brownfields Redevelopment Fund, the Agency may also enter  
33          into agreements with financial institutions and other  
34          persons for the purpose of selling loans and developing a

1 secondary market for such loans. The Agency shall have  
 2 the power to create and establish such reserve funds and  
 3 accounts as may be necessary or desirable to accomplish  
 4 its purposes under this subsection and to allocate its  
 5 available moneys into such funds and accounts.  
 6 Investment earnings on moneys held in the Brownfields  
 7 Redevelopment Fund, including any reserve fund or pledged  
 8 fund, shall be deposited into the Brownfields  
 9 Redevelopment Fund.

10 (Source: P.A. 90-123, eff. 7-21-97; 91-36, eff. 6-15-99.)

11 (415 ILCS 5/58.13)

12 Sec. 58.13. Municipal Brownfields Redevelopment Grant  
 13 Program.

14 (a)(1) The Agency shall establish and administer a  
 15 program of grants to be known as the Municipal  
 16 Brownfields Redevelopment Grant Program to provide  
 17 municipalities in Illinois with financial assistance to  
 18 be used for coordination of activities related to  
 19 brownfields redevelopment, including but not limited to  
 20 identification of brownfields sites, site investigation  
 21 and determination of remediation objectives and related  
 22 plans and reports, and development of remedial action  
 23 plans, but not including the implementation of remedial  
 24 action plans and remedial action completion reports. The  
 25 plans and reports shall be developed in accordance with  
 26 Title XVII of this Act.

27 (2) Grants shall be awarded on a competitive basis  
 28 subject to availability of funding. Criteria for  
 29 awarding grants shall include, but shall not be limited  
 30 to the following:

- 31 (A) problem statement and needs assessment;
- 32 (B) community-based planning and involvement;
- 33 (C) implementation planning; and

1 (D) long-term benefits and sustainability.

2 (3) The Agency may give weight to geographic  
3 location to enhance geographic distribution of grants  
4 across this State.

5 (4) Grants shall be limited to a maximum of  
6 \$240,000 ~~\$120,000~~ and no municipality shall receive more  
7 than one grant under this Section.

8 (5) Grant amounts shall not exceed 70% of the  
9 project amount, with the remainder to be provided by the  
10 municipality as local matching funds.

11 (b) The Agency shall have the authority to enter into  
12 any contracts or agreements that may be necessary to carry  
13 out its duties or responsibilities under this Section. The  
14 Agency shall have the authority to adopt rules setting forth  
15 procedures and criteria for administering the Municipal  
16 Brownfields Redevelopment Grant Program. The rules adopted  
17 by the Agency may include but shall not be limited to the  
18 following:

19 (1) purposes for which grants are available;

20 (2) application periods and content of  
21 applications;

22 (3) procedures and criteria for Agency review of  
23 grant applications, grant approvals and denials, and  
24 grantee acceptance;

25 (4) grant payment schedules;

26 (5) grantee responsibilities for work schedules,  
27 work plans, reports, and record keeping;

28 (6) evaluation of grantee performance, including  
29 but not limited to auditing and access to sites and  
30 records;

31 (7) requirements applicable to contracting and  
32 subcontracting by the grantee;

33 (8) penalties for noncompliance with grant  
34 requirements and conditions, including stop-work orders,

- 1 termination of grants, and recovery of grant funds;
- 2 (9) indemnification of this State and the Agency by
- 3 the grantee; and
- 4 (10) manner of compliance with the Local Government
- 5 Professional Services Selection Act.

6 (Source: P.A. 90-123, eff. 7-21-97.)

7 (415 ILCS 5/58.18 new)

8 Sec. 58.18. Brownfields Site Restoration Program.

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

20 (2) For each State fiscal year in which funds are  
 21 made available to the Agency for payment under this  
 22 Section, the Agency must allocate 20% of the funds to be  
 23 available to counties with populations over 2,000,000.  
 24 The remaining funds must be made available to all other  
 25 counties in the State.

26 (3) The Agency must not approve payment in excess  
 27 of \$750,000 to a Remediation Applicant for remediation  
 28 costs incurred at a remediation site. Eligibility must be  
 29 determined based on a minimum capital investment in the  
 30 redevelopment of the site, and payment amounts must not  
 31 exceed the net economic benefit to the State of the  
 32 remediation project. In addition to these limitations,  
 33 the total payment to be made to an applicant must not

1 exceed an amount equal to 20% of the capital investment  
2 at the site.

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

12 (b) Prior to applying to the Agency for payment, a  
13 Remediation Applicant must first submit to the Department of  
14 Commerce and Community Affairs an application for review of  
15 eligibility. The Department must review the eligibility  
16 application to determine whether the Remediation Applicant is  
17 eligible for the payment. The application must be on forms  
18 prescribed and provided by the Department of Commerce and  
19 Community Affairs. At a minimum, the application must  
20 include the following:

21 (1) Information identifying the Remediation  
22 Applicant and the site for which the payment is being  
23 sought and the date of acceptance into the Site  
24 Remediation Program.

25 (2) Information demonstrating that the site for  
26 which the payment is being sought is abandoned or  
27 underutilized property. "Abandoned property" means real  
28 property previously used for, or that has the potential  
29 to be used for, commercial or industrial purposes that  
30 reverted to the ownership of the State, a county or  
31 municipal government, or an agency thereof, through  
32 donation, purchase, tax delinquency, foreclosure,  
33 default, or settlement, including conveyance by deed in  
34 lieu of foreclosure; or privately owned property that has

1 been vacant for a period of not less than 3 years from  
2 the time an application is made to the Department of  
3 Commerce and Community Affairs. "Underutilized property"  
4 means real property of which less than 35% of the  
5 commercially usable space of the property and  
6 improvements thereon are used for their most commercially  
7 profitable and economically productive uses.

8 (3) Information demonstrating that remediation of  
9 the site for which the payment is being sought will  
10 result in a net economic benefit to the State of  
11 Illinois. The "net economic benefit" must be determined  
12 based on factors including, but not limited to, the  
13 capital investment, the number of jobs created, the  
14 number of jobs retained if it is demonstrated the jobs  
15 would otherwise be lost, capital improvements, the number  
16 of construction-related jobs, increased sales, material  
17 purchases, other increases in service and operational  
18 expenditures, and other factors established by the  
19 Department of Commerce and Community Affairs. Priority  
20 must be given to sites located in areas with high levels  
21 of poverty, where the unemployment rate exceeds the State  
22 average, where an enterprise zone exists, or where the  
23 area is otherwise economically depressed as determined by  
24 the Department of Commerce and Community Affairs.

25 (4) An application fee in the amount set forth in  
26 subsection (c) for each site for which review of an  
27 application is being sought.

28 (c) The fee for eligibility reviews conducted by the  
29 Department of Commerce and Community Affairs under this  
30 Section is \$1,000 for each site reviewed. The application  
31 fee must be made payable to the State of Illinois for deposit  
32 into the Brownfields Site Restoration Program Fund.

33 (d) Within 60 days after receipt by the Department of  
34 Commerce and Community Affairs of an application meeting the

1 requirements of subsection (b), the Department of Commerce  
2 and Community Affairs must issue a letter to the applicant  
3 approving or disapproving the application. If the  
4 application is approved, the Department of Commerce and  
5 Community Affairs' letter must also include its determination  
6 of the "net economic benefit" of the remediation project and  
7 the maximum amount of the payment to be made available to the  
8 applicant for remediation costs. The payment by the Agency  
9 under this Section must not exceed the "net economic benefit"  
10 of the remediation project, as determined by the Department  
11 of Commerce and Community Affairs.

12 (e) An application for a review of remediation costs  
13 must not be submitted to the Agency unless the Department of  
14 Commerce and Community Affairs has determined the Remediation  
15 Applicant is eligible under subsection (d). If the  
16 Department of Commerce and Community Affairs has determined  
17 that a Remediation Applicant is eligible under subsection  
18 (d), the Remediation Applicant may submit an application for  
19 payment to the Agency under this Section. Except as provided  
20 in subsection (f), an application for review of remediation  
21 costs must not be submitted until a No Further Remediation  
22 Letter has been issued by the Agency and recorded in the  
23 chain of title for the site in accordance with Section 58.10.  
24 The Agency must review the application to determine whether  
25 the costs submitted are remediation costs and whether the  
26 costs incurred are reasonable. The application must be on  
27 forms prescribed and provided by the Agency. At a minimum,  
28 the application must include the following:

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

33 (2) A copy of the No Further Remediation Letter  
34 with official verification that the letter has been



1 recorded in the chain of title for the site and a  
2 demonstration that the site for which the application is  
3 submitted is the same site as the one for which the No  
4 Further Remediation Letter is issued.

5 (3) A demonstration that the release of the  
6 regulated substances of concern for which the No Further  
7 Remediation Letter was issued was not caused or  
8 contributed to in any material respect by the Remediation  
9 Applicant. The Agency must make determinations as to  
10 reimbursement availability consistent with rules adopted  
11 by the Pollution Control Board for the administration and  
12 enforcement of Section 58.9 of this Act.

13 (4) A copy of the Department of Commerce and  
14 Community Affairs' letter approving eligibility,  
15 including the net economic benefit of the remediation  
16 project.

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

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

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

25 (8) An application fee in the amount set forth in  
26 subsection (j) for each site for which review of  
27 remediation costs is requested.

28 (9) Any other information deemed appropriate by the  
29 Agency.

30 (f) An application for review of remediation costs may  
31 be submitted to the Agency prior to the issuance of a No  
32 Further Remediation Letter if the Remediation Applicant has  
33 a Remedial Action Plan approved by the Agency under the terms  
34 of which the Remediation Applicant will remediate groundwater

1 for more than one year. The Agency must review the  
2 application to determine whether the costs submitted are  
3 remediation costs and whether the costs incurred are  
4 reasonable. The application must be on forms prescribed and  
5 provided by the Agency. At a minimum, the application must  
6 include the following:

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

11 (2) A copy of the Agency letter approving the  
12 Remedial Action Plan.

13 (3) A demonstration that the release of the  
14 regulated substances of concern for which the Remedial  
15 Action Plan was approved was not caused or contributed to  
16 in any material respect by the Remediation Applicant.  
17 The Agency must make determinations as to reimbursement  
18 availability consistent with rules adopted by the  
19 Pollution Control Board for the administration and  
20 enforcement of Section 58.9 of this Act.

21 (4) A copy of the Department of Commerce and  
22 Community Affairs' letter approving eligibility,  
23 including the net economic benefit of the remediation  
24 project.

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

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

30 (7) A demonstration that the costs submitted for  
31 review were incurred by the Remediation Applicant who  
32 received approval of the Remediation Action Plan.

33 (8) An application fee in the amount set forth in  
34 subsection (j) for each site for which review of

1       remediation costs is requested.

2           (9) Any other information deemed appropriate by the  
3       Agency.

4       (g) For a Remediation Applicant seeking a payment under  
5       subsection (f), until the Agency issues a No Further  
6       Remediation Letter for the site, no more than 75% of the  
7       allowed payment may be claimed by the Remediation Applicant.  
8       The remaining 25% may be claimed following the issuance by  
9       the Agency of a No Further Remediation Letter for the site.  
10       For a Remediation Applicant seeking a payment under  
11       subsection (e), until the Agency issues a No Further  
12       Remediation Letter for the site, no payment may be claimed by  
13       the Remediation Applicant.

14           (h) (1) Within 60 days after receipt by the Agency  
15       of an application meeting the requirements of subsection  
16       (e) or (f), the Agency must issue a letter to the  
17       applicant approving, disapproving, or modifying the  
18       remediation costs submitted in the application. If an  
19       application is disapproved or approved with modification  
20       of remediation costs, then the Agency's letter must set  
21       forth the reasons for the disapproval or modification.

22           (2) If a preliminary review of a budget plan has  
23       been obtained under subsection (i), the Remediation  
24       Applicant may submit, with the application and supporting  
25       documentation under subsections (e) or (f), a copy of the  
26       Agency's final determination accompanied by a  
27       certification that the actual remediation costs incurred  
28       for the development and implementation of the Remedial  
29       Action Plan are equal to or less than the costs approved  
30       in the Agency's final determination on the budget plan.  
31       The certification must be signed by the Remediation  
32       Applicant and notarized. Based on that submission, the  
33       Agency is not required to conduct further review of the  
34       costs incurred for development and implementation of the

1 Remedial Action Plan and may approve costs as submitted.

2 (3) Within 35 days after receipt of an Agency  
3 letter disapproving or modifying an application for  
4 approval of remediation costs, the Remediation Applicant  
5 may appeal the Agency's decision to the Board in the  
6 manner provided for the review of permits in Section 40  
7 of this Act.

8 (i) (1) A Remediation Applicant may obtain a  
9 preliminary review of estimated remediation costs for the  
10 development and implementation of the Remedial Action  
11 Plan by submitting a budget plan along with the Remedial  
12 Action Plan. The budget plan must be set forth on forms  
13 prescribed and provided by the Agency and must include,  
14 but is not limited to, line item estimates of the costs  
15 associated with each line item (such as personnel,  
16 equipment, and materials) that the Remediation Applicant  
17 anticipates will be incurred for the development and  
18 implementation of the Remedial Action Plan. The Agency  
19 must review the budget plan along with the Remedial  
20 Action Plan to determine whether the estimated costs  
21 submitted are remediation costs and whether the costs  
22 estimated for the activities are reasonable.

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

27 (3) The budget plan must be accompanied by the  
28 applicable fee as set forth in subsection (j).

29 (4) Submittal of a budget plan must be deemed an  
30 automatic 60-day waiver of the Remedial Action Plan  
31 review deadlines set forth in this Section and rules  
32 adopted under this Section.

33 (5) Within the applicable period of review, the  
34 Agency must issue a letter to the Remediation Applicant

1 approving, disapproving, or modifying the estimated  
2 remediation costs submitted in the budget plan. If a  
3 budget plan is disapproved or approved with modification  
4 of estimated remediation costs, the Agency's letter must  
5 set forth the reasons for the disapproval or  
6 modification.

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

12 (j) The fees for reviews conducted by the Agency under  
13 this Section are in addition to any other fees or payments  
14 for Agency services rendered pursuant to the Site Remediation  
15 Program and are as follows:

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

18 (2) The fee for the review of the budget plan  
19 submitted under subsection (i) is \$500 for each site  
20 reviewed.

21 The application fee must be made payable to the State of  
22 Illinois, for deposit into the Brownfields Site Restoration  
23 Program Fund.

24 (k) The Brownfields Site Restoration Program Fund.

25 (1) The Brownfields Site Restoration Program Fund  
26 is created as a special fund in the State treasury to be  
27 used by the Agency, subject to appropriation, exclusively  
28 for the purposes of this Section, including payment for  
29 the costs of administering this Act.

30 (2) The Fund consists of collected fees,  
31 appropriations from the General Assembly, and gifts and  
32 grants to the Fund.

33 (3) The State Treasurer must invest the money in  
34 the Fund not currently needed to meet the obligations of

1 the Fund in the same manner as other public funds may be  
2 invested. All interest earned on moneys in the Fund must  
3 be deposited into the Fund.

4 (4) The money in the Fund at the end of a State  
5 fiscal year must remain in the Fund to be used  
6 exclusively for the purposes of this Section.  
7 Expenditures from the Fund are subject to appropriation  
8 by the General Assembly.

9 (1) The Department and the Agency are authorized to  
10 enter into any contracts or agreements that may be necessary  
11 to carry out their duties and responsibilities under this  
12 Section.

13 (m) Within 6 months after the effective date of this  
14 amendatory Act of 2001, the Department of Commerce and  
15 Community Affairs and the Agency must propose rules  
16 prescribing procedures and standards for the administration  
17 of this Section. Within 9 months after receipt of the  
18 proposed rules, the Board shall adopt on second notice,  
19 pursuant to Sections 27 and 28 of this Act and the Illinois  
20 Administrative Procedures Act, rules that are consistent with  
21 this Section. Prior to the effective date of rules adopted  
22 under this Section, the Department of Commerce and Community  
23 Affairs and the Agency may conduct reviews of applications  
24 under this Section and the Agency is further authorized to  
25 distribute guidance documents on costs that are eligible or  
26 ineligible as remediation costs.

27 Section 15. The Response Action Contractor  
28 Indemnification Act is amended by changing Section 5 as  
29 follows:

30 (415 ILCS 100/5) (from Ch. 111 1/2, par. 7205)

31 Sec. 5. Response Contractors Indemnification Fund.

32 (a) There is hereby created the Response Contractors

1 Indemnification Fund. The State Treasurer, ex officio, shall  
2 be custodian of the Fund, and the Comptroller shall direct  
3 payments from the Fund upon vouchers properly certified by  
4 the Attorney General in accordance with Section 4. The  
5 Treasurer shall credit interest on the Fund to the Fund.

6 (b) Every State response action contract shall provide  
7 that 5% of each payment to be made by the State under the  
8 contract shall be paid by the State directly into the  
9 Response Contractors Indemnification Fund rather than to the  
10 contractor, except that when there is more than \$2,000,000  
11 \$4,000,000 in the Fund at the beginning of a State fiscal  
12 year, State response action contracts during that fiscal year  
13 need not provide that 5% of each payment made under the  
14 contract be paid into the Fund. When only a portion of a  
15 contract relates to a remedial or response action, or to the  
16 identification, handling, storage, treatment or disposal of a  
17 pollutant, the contract shall provide that only that portion  
18 is subject to this subsection.

19 (c) Within 30 days after the effective date of this  
20 amendatory Act of 1997, the Comptroller shall order  
21 transferred and the Treasurer shall transfer \$1,200,000 from  
22 the Response Contractors Indemnification Fund to the  
23 Brownfields Redevelopment Fund. The Comptroller shall order  
24 transferred and the Treasurer shall transfer \$1,200,000 from  
25 the Response Contractors Indemnification Fund to the  
26 Brownfields Redevelopment Fund on the first day of fiscal  
27 years 1999, 2000, 2001, and 2002, 2003, 2004, and 2005.

28 (d) Within 30 days after the effective date of this  
29 amendatory Act of the 91st General Assembly, the Comptroller  
30 shall order transferred and the Treasurer shall transfer  
31 \$2,000,000 from the Response Contractors Indemnification Fund

1 to the Asbestos Abatement Fund.

2 (Source: P.A. 90-123, eff. 7-21-97; 91-704, eff. 7-1-00.)