Illinois / News

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FOR IMMEDIATE RELEASE FRED BIRD 217-525-7988

SPRINGFIELD, ILL., May 29--David P. Currie, principal draftsman of the Environmental Protection act, called its passage today (Friday) a "tremendous victory" in the war against pollution.

The act, which Gov. Richard B. Ogilvie this week called the priority item of this session, gives Illinois the strongest pollution program of any state in the nation, according to Currie.

Currie, 34, was named coordinator of environmental quality by Ogilvie on Apr. 7. He is a professor of law at the University of Chicago, has taught pollution law, and has drafted legislation for submission to the Congress and the Chicago City Council.

As one of three coordinators named by the governor, Currie has no line or administrative responsibility, but serves as a policy advisor to the governor.

As announced by the governor, his first major assignment was the drafting of the act along the guidelines set down by Ogilvie.

Currie was graduated magna cum laude from the Harvard law school in 1960, and served a year as law clerk to Justice Frankfurter of the United States Supreme Court.

Currie has been a consistent and outspoken critic of present weaknesses in the field of anti-pollution law and enforcement.

His complete statement upon passage of the bill follows:

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STATEMENT OF DAVID P. CURRIE, governor's coordinator for environmental quality, on the passage of the Illinois Environmental Protection act:

Passage of this act is unquestionably the most significant action to preserve our environment in the history of Illinois--or of any other state in the nation.

The act provides--for the first time anywhere--for a delegation of comprehensive power to administrative agencies which can deal effectively with present and future causes of environmental damage.

Virtually all present law and practical application of the law in this field have been weighted for more than a century to protect the "rights" of polluters. The Illinois act is a legal milestone in that both its intent and its provisions clearly establish that the rights of the people are paramount.

Successful administration of the act will require of members of the Pollution Control Board the highest possible standards of ethical conduct and skill to translate the terms of the act into positive and vigorous action.

I am hopeful for the success of the entire program for two reasons: First, the urgent need for swift action is more generally recognized than ever before. Second, the business community displayed during the drafting of the final bill what previously I would have considered an unbelievable degree of concern and responsibility.

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As a law professor, a worker against pollution, and as a private citizen, I have in the past condemned our laws, our municipalities, and our industries for massive resistance to change for the better.

I decided, therefore, that the original draft of the bill would contain the best possible substantive provisions we could devise. And I was prepared, frankly, to be beaten on many major points.

Instead--thanks to far-sighted legislators, the news media, concerned citizens and progressive representatives of industry--the original draft survived virtually intact and, in some areas, in an improved form.

The process by which the act was passed--and the changes made in the original draft of the act--deserve a full discussion both because of the high degree of public interest and also because of the confusion over the act's substantive provisions which has been caused, in part, by statements made by persons poorly informed--or politically motivated--in the matter.

Not surprisingly, the act went through the Illinois House with ease, since objectors planned to amend the bill in the Senate.

Thus we were confronted just a few days before adjournment with a flood of industry-sponsored Senate amendments which would have gutted the bill.

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The complaints had one common theme--that the propsed act would put intolerable burdens on industry which could lead to the closing of plants, damage to the economy of Illinois, or even to the disruption of the complex technology which supports our mode of life.

With only a few days in which to meet these objections, the administration appealed for all possible help from newsmen, concerned citizens groups, and members of the General Assembly.

The showdown, however, came at a series of conferences with industry spokesmen. With no exceptions whatsoever, we were able to meet their reasonable objections without damaging the bill.

As a result of the conciliatory attitude of the industry spokesmen, we were then able to convince the members of the General Assembly that the act was fair, was urgently needed, and should be passed. Any fear that we were about to destroy industry in Illinois was dispelled, and the cooperative attitude of industry in the drafting of the final bill gives me great hope for vigorous future enforcement of the act.

What we gave up

What we gave up in the final conferences is of minor significance, because nothing essential to the total program was lost. Following are some of the points:

--Minor changes were made in wording; the "danger of water pollution," for example, was changed to "water pollution hazard."

--Inspections will be made in a constitutional manner, that is, with search warrants as required. The board will be required to consider both the benefits and the costs of pollution controls. Board members will be "technically qualified" in order to serve. Permit fees must be reasonable. The concept that the cost of compliance must "totally dwarf" the public benefits before a variance is granted was replaced by the clearer and stronger concept that variances can be granted in cases which impose an arbitrary or unreasonable hardship.

--A confusing section dealing with local versus state powers was dropped. All existing powers were preserved and no additional authority is needed to allow cities, counties, sanitary districts and other bodies to adopt and enforce their own regulations.

--The proposed right of citizens to sue for damages was eliminated because of legitimate fears that it would open the door to a flood of nuisance suits which would lead to unbearable defense costs. Under the existing law of nuisance, the right of citizens to sue to stop pollution already exists, the private right to enforce the act by injunction remains, and there are many other existing legal avenues open to persons who suffer from the improper acts of others.

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--The proposed power to bar or limit the sale of non-returnable bottles and other substances which cause an unreasonable problem of disposal was eliminated. This proposal was one of the chief sources of industry objections, and it admittedly is an untried economic weapon which could be misused.

We therefore accepted an amendment allowing limited regulation after a research study of waste recycling, which is about all the power we know how to use today.

--The proposal to levy charges against pollution discharges was eliminated for three reasons: Such charges could be construed as "licenses to pollute;" no restraints were written into the original act to prevent excessive charges; and doubts were raised about the constitutionality of this untried new concept of law.

--Instead of an automatic provision to deny variances unless the board acted within 45 days, we accepted an amendment providing that variances are automatically granted if not acted upon within 90 days. The practical effect of the amendment is that it gives the board twice the time to investigate before making a decision. A board committed to doing its job will suffer no handicap at all under the amended procedure.

--The costs of equipment to monitor pollution were to be borne by industry, and it was feared that these costs could easily become unreasonable. We gave ground without hesitancy here because the board will have all the power and sufficient money to collect information through monitoring devices or other means.

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What we gained

Space does not permit a full review of the far-reaching and detailed principles, procedures and organizations established by the act.

In brief, the act establishes unified authority to control all present and foreseeable forms of pollution, and creates a research institute badly needed to provide the technical knowledge which has been scattered, unproven, or unknown. A few other key features deserve mention:

--Penalties are increased, procedures are simplified to end the unendurable delays of present practice, and the state's power is clearly established without any diminution of local power.

--In emergencies, the board can act directly to stop sources of pollution, and the state's authority to act against pollution outside the state is broadened. The full authority of the attorney general in pollution matters is retained, and in some instances, increased.

--The time-consuming "conciliation" feature of present law is eliminated, and the present system of granting permits to new equipment installations is broadened to include existing equipment.

--The act reinforces the principle that administrative actions are subject to judicial review--but without the endless delays of present law. One of the act's strongest features is that compliance to board order is required unless an appeal is taken to an appellate court within 35 days. This is a solid "first" in Illinois.

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--The public's right to information, to initiate proceedings, and to participate in board matters is greatly broadened.

Objections

Certain objections--such as the erroneous contention that local power is abridged--have been answered in the preceding. One objection is that the act as amended does not require "the best practicable treatment or control" of pollution. This is a semantic difference of no consequence whatsoever. The simple fact is that the bill requires the board to set standards to control and abate pollution, and gives the board unprecedented power to enforce the standards.

Much of the language used by objectors to the bills is political laptrap. To say that "the polluters won the fight" is to betray either the grossest kind of ignorance of the state of the law and the practices in the anti-pollution field--or a shoddy use of this historic bill as the vehicle for political quackery.

For emphasis, let me repeat: Illinois has won a tremendous victory through the passage of the Environmental Protection act.

David P. Currie

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