



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB1441

by Rep. Frank J. Mautino

SYNOPSIS AS INTRODUCED:

65 ILCS 5/1-2-1
415 ILCS 5/42

from Ch. 24, par. 1-2-1
from Ch. 111 1/2, par. 1042

Amends the Environmental Protection Act. Provides that a municipality may impose a penalty against any person or organization owning or leasing property that releases a hazardous substance or any other contaminant that the unit of local government finds injures the public health and the safety of the community. Provides that the penalty may not exceed \$50,000 for the violation and an additional \$10,000 for each day during which the violation continues. Amends the Illinois Municipal Code to make conforming changes. Effective immediately.

LRB097 07058 JDS 47151 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning safety.

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

4 Section 5. The Illinois Municipal Code is amended by
5 changing Section 1-2-1 as follows:

6 (65 ILCS 5/1-2-1) (from Ch. 24, par. 1-2-1)

7 Sec. 1-2-1. The corporate authorities of each municipality
8 may pass all ordinances and make all rules and regulations
9 proper or necessary, to carry into effect the powers granted to
10 municipalities, with such fines or penalties as may be deemed
11 proper. No fine or penalty, however, except civil penalties
12 provided for failure to make returns or to pay any taxes levied
13 by the municipality and penalties imposed under subsection (k)
14 of Section 42 of the Environmental Protection Act, shall exceed
15 \$750 and no imprisonment authorized in Section 1-2-9 for
16 failure to pay any fine, penalty or cost shall exceed 6 months
17 for one offense.

18 A penalty imposed for violation of an ordinance may
19 include, or consist of, a requirement that the defendant do one
20 or both of the following:

21 (1) Complete an education program, except that a holder
22 of a valid commercial driver's license who commits a
23 vehicle weight or size restriction violation shall not be

1 required to complete an education program under this
2 Section.

3 (2) Perform some reasonable public service work such as
4 but not limited to the picking up of litter in public parks
5 or along public highways or the maintenance of public
6 facilities.

7 A default in the payment of a fine or penalty or any
8 installment of a fine or penalty may be collected by any means
9 authorized for the collection of monetary judgments. The
10 municipal attorney of the municipality in which the fine or
11 penalty was imposed may retain attorneys and private collection
12 agents for the purpose of collecting any default in payment of
13 any fine or penalty or installment of that fine or penalty. Any
14 fees or costs incurred by the municipality with respect to
15 attorneys or private collection agents retained by the
16 municipal attorney under this Section shall be charged to the
17 offender.

18 A low-income individual required to complete an education
19 program under this Section who provides proof of eligibility
20 for the federal earned income tax credit under Section 32 of
21 the Internal Revenue Code or the Illinois earned income tax
22 credit under Section 212 of the Illinois Income Tax Act shall
23 not be required to pay any fee for participating in a required
24 education program.

25 (Source: P.A. 95-389, eff. 1-1-08; 96-288, eff. 8-11-09.)

1 Section 10. The Environmental Protection Act is amended by
2 changing Section 42 as follows:

3 (415 ILCS 5/42) (from Ch. 111 1/2, par. 1042)

4 Sec. 42. Civil penalties.

5 (a) Except as provided in this Section, any person that
6 violates any provision of this Act or any regulation adopted by
7 the Board, or any permit or term or condition thereof, or that
8 violates any order of the Board pursuant to this Act, shall be
9 liable for a civil penalty of not to exceed \$50,000 for the
10 violation and an additional civil penalty of not to exceed
11 \$10,000 for each day during which the violation continues; such
12 penalties may, upon order of the Board or a court of competent
13 jurisdiction, be made payable to the Environmental Protection
14 Trust Fund, to be used in accordance with the provisions of the
15 Environmental Protection Trust Fund Act.

16 (b) Notwithstanding the provisions of subsection (a) of
17 this Section:

18 (1) Any person that violates Section 12(f) of this Act
19 or any NPDES permit or term or condition thereof, or any
20 filing requirement, regulation or order relating to the
21 NPDES permit program, shall be liable to a civil penalty of
22 not to exceed \$10,000 per day of violation.

23 (2) Any person that violates Section 12(g) of this Act
24 or any UIC permit or term or condition thereof, or any
25 filing requirement, regulation or order relating to the

1 State UIC program for all wells, except Class II wells as
2 defined by the Board under this Act, shall be liable to a
3 civil penalty not to exceed \$2,500 per day of violation;
4 provided, however, that any person who commits such
5 violations relating to the State UIC program for Class II
6 wells, as defined by the Board under this Act, shall be
7 liable to a civil penalty of not to exceed \$10,000 for the
8 violation and an additional civil penalty of not to exceed
9 \$1,000 for each day during which the violation continues.

10 (3) Any person that violates Sections 21(f), 21(g),
11 21(h) or 21(i) of this Act, or any RCRA permit or term or
12 condition thereof, or any filing requirement, regulation
13 or order relating to the State RCRA program, shall be
14 liable to a civil penalty of not to exceed \$25,000 per day
15 of violation.

16 (4) In an administrative citation action under Section
17 31.1 of this Act, any person found to have violated any
18 provision of subsection (o) of Section 21 of this Act shall
19 pay a civil penalty of \$500 for each violation of each such
20 provision, plus any hearing costs incurred by the Board and
21 the Agency. Such penalties shall be made payable to the
22 Environmental Protection Trust Fund, to be used in
23 accordance with the provisions of the Environmental
24 Protection Trust Fund Act; except that if a unit of local
25 government issued the administrative citation, 50% of the
26 civil penalty shall be payable to the unit of local

1 government.

2 (4-5) In an administrative citation action under
3 Section 31.1 of this Act, any person found to have violated
4 any provision of subsection (p) of Section 21, Section
5 22.51, Section 22.51a, or subsection (k) of Section 55 of
6 this Act shall pay a civil penalty of \$1,500 for each
7 violation of each such provision, plus any hearing costs
8 incurred by the Board and the Agency, except that the civil
9 penalty amount shall be \$3,000 for each violation of any
10 provision of subsection (p) of Section 21, Section 22.51,
11 Section 22.51a, or subsection (k) of Section 55 that is the
12 person's second or subsequent adjudication violation of
13 that provision. The penalties shall be deposited into the
14 Environmental Protection Trust Fund, to be used in
15 accordance with the provisions of the Environmental
16 Protection Trust Fund Act; except that if a unit of local
17 government issued the administrative citation, 50% of the
18 civil penalty shall be payable to the unit of local
19 government.

20 (5) Any person who violates subsection 6 of Section
21 39.5 of this Act or any CAAPP permit, or term or condition
22 thereof, or any fee or filing requirement, or any duty to
23 allow or carry out inspection, entry or monitoring
24 activities, or any regulation or order relating to the
25 CAAPP shall be liable for a civil penalty not to exceed
26 \$10,000 per day of violation.

1 (6) Any owner or operator of a community water system
2 that violates subsection (b) of Section 18.1 or subsection
3 (a) of Section 25d-3 of this Act shall, for each day of
4 violation, be liable for a civil penalty not to exceed \$5
5 for each of the premises connected to the affected
6 community water system.

7 (b.5) In lieu of the penalties set forth in subsections (a)
8 and (b) of this Section, any person who fails to file, in a
9 timely manner, toxic chemical release forms with the Agency
10 pursuant to Section 25b-2 of this Act shall be liable for a
11 civil penalty of \$100 per day for each day the forms are late,
12 not to exceed a maximum total penalty of \$6,000. This daily
13 penalty shall begin accruing on the thirty-first day after the
14 date that the person receives the warning notice issued by the
15 Agency pursuant to Section 25b-6 of this Act; and the penalty
16 shall be paid to the Agency. The daily accrual of penalties
17 shall cease as of January 1 of the following year. All
18 penalties collected by the Agency pursuant to this subsection
19 shall be deposited into the Environmental Protection Permit and
20 Inspection Fund.

21 (c) Any person that violates this Act, any rule or
22 regulation adopted under this Act, any permit or term or
23 condition of a permit, or any Board order and causes the death
24 of fish or aquatic life shall, in addition to the other
25 penalties provided by this Act, be liable to pay to the State
26 an additional sum for the reasonable value of the fish or

1 aquatic life destroyed. Any money so recovered shall be placed
2 in the Wildlife and Fish Fund in the State Treasury.

3 (d) The penalties provided for in this Section may be
4 recovered in a civil action.

5 (e) The State's Attorney of the county in which the
6 violation occurred, or the Attorney General, may, at the
7 request of the Agency or on his own motion, institute a civil
8 action for an injunction, prohibitory or mandatory, to restrain
9 violations of this Act, any rule or regulation adopted under
10 this Act, any permit or term or condition of a permit, or any
11 Board order, or to require such other actions as may be
12 necessary to address violations of this Act, any rule or
13 regulation adopted under this Act, any permit or term or
14 condition of a permit, or any Board order.

15 (f) The State's Attorney of the county in which the
16 violation occurred, or the Attorney General, shall bring such
17 actions in the name of the people of the State of Illinois.
18 Without limiting any other authority which may exist for the
19 awarding of attorney's fees and costs, the Board or a court of
20 competent jurisdiction may award costs and reasonable
21 attorney's fees, including the reasonable costs of expert
22 witnesses and consultants, to the State's Attorney or the
23 Attorney General in a case where he has prevailed against a
24 person who has committed a wilful, knowing or repeated
25 violation of this Act, any rule or regulation adopted under
26 this Act, any permit or term or condition of a permit, or any

1 Board order.

2 Any funds collected under this subsection (f) in which the
3 Attorney General has prevailed shall be deposited in the
4 Hazardous Waste Fund created in Section 22.2 of this Act. Any
5 funds collected under this subsection (f) in which a State's
6 Attorney has prevailed shall be retained by the county in which
7 he serves.

8 (g) All final orders imposing civil penalties pursuant to
9 this Section shall prescribe the time for payment of such
10 penalties. If any such penalty is not paid within the time
11 prescribed, interest on such penalty at the rate set forth in
12 subsection (a) of Section 1003 of the Illinois Income Tax Act,
13 shall be paid for the period from the date payment is due until
14 the date payment is received. However, if the time for payment
15 is stayed during the pendency of an appeal, interest shall not
16 accrue during such stay.

17 (h) In determining the appropriate civil penalty to be
18 imposed under subdivisions (a), (b) (1), (b) (2), (b) (3), or
19 (b) (5) of this Section, the Board is authorized to consider any
20 matters of record in mitigation or aggravation of penalty,
21 including but not limited to the following factors:

22 (1) the duration and gravity of the violation;

23 (2) the presence or absence of due diligence on the
24 part of the respondent in attempting to comply with
25 requirements of this Act and regulations thereunder or to
26 secure relief therefrom as provided by this Act;

1 (3) any economic benefits accrued by the respondent
2 because of delay in compliance with requirements, in which
3 case the economic benefits shall be determined by the
4 lowest cost alternative for achieving compliance;

5 (4) the amount of monetary penalty which will serve to
6 deter further violations by the respondent and to otherwise
7 aid in enhancing voluntary compliance with this Act by the
8 respondent and other persons similarly subject to the Act;

9 (5) the number, proximity in time, and gravity of
10 previously adjudicated violations of this Act by the
11 respondent;

12 (6) whether the respondent voluntarily self-disclosed,
13 in accordance with subsection (i) of this Section, the
14 non-compliance to the Agency; and

15 (7) whether the respondent has agreed to undertake a
16 "supplemental environmental project," which means an
17 environmentally beneficial project that a respondent
18 agrees to undertake in settlement of an enforcement action
19 brought under this Act, but which the respondent is not
20 otherwise legally required to perform.

21 In determining the appropriate civil penalty to be imposed
22 under subsection (a) or paragraph (1), (2), (3), or (5) of
23 subsection (b) of this Section, the Board shall ensure, in all
24 cases, that the penalty is at least as great as the economic
25 benefits, if any, accrued by the respondent as a result of the
26 violation, unless the Board finds that imposition of such

1 penalty would result in an arbitrary or unreasonable financial
2 hardship. However, such civil penalty may be off-set in whole
3 or in part pursuant to a supplemental environmental project
4 agreed to by the complainant and the respondent.

5 (i) A person who voluntarily self-discloses non-compliance
6 to the Agency, of which the Agency had been unaware, is
7 entitled to a 100% reduction in the portion of the penalty that
8 is not based on the economic benefit of non-compliance if the
9 person can establish the following:

10 (1) that the non-compliance was discovered through an
11 environmental audit or a compliance management system
12 documented by the regulated entity as reflecting the
13 regulated entity's due diligence in preventing, detecting,
14 and correcting violations;

15 (2) that the non-compliance was disclosed in writing
16 within 30 days of the date on which the person discovered
17 it;

18 (3) that the non-compliance was discovered and
19 disclosed prior to:

20 (i) the commencement of an Agency inspection,
21 investigation, or request for information;

22 (ii) notice of a citizen suit;

23 (iii) the filing of a complaint by a citizen, the
24 Illinois Attorney General, or the State's Attorney of
25 the county in which the violation occurred;

26 (iv) the reporting of the non-compliance by an

1 employee of the person without that person's
2 knowledge; or

3 (v) imminent discovery of the non-compliance by
4 the Agency;

5 (4) that the non-compliance is being corrected and any
6 environmental harm is being remediated in a timely fashion;

7 (5) that the person agrees to prevent a recurrence of
8 the non-compliance;

9 (6) that no related non-compliance events have
10 occurred in the past 3 years at the same facility or in the
11 past 5 years as part of a pattern at multiple facilities
12 owned or operated by the person;

13 (7) that the non-compliance did not result in serious
14 actual harm or present an imminent and substantial
15 endangerment to human health or the environment or violate
16 the specific terms of any judicial or administrative order
17 or consent agreement;

18 (8) that the person cooperates as reasonably requested
19 by the Agency after the disclosure; and

20 (9) that the non-compliance was identified voluntarily
21 and not through a monitoring, sampling, or auditing
22 procedure that is required by statute, rule, permit,
23 judicial or administrative order, or consent agreement.

24 If a person can establish all of the elements under this
25 subsection except the element set forth in paragraph (1) of
26 this subsection, the person is entitled to a 75% reduction in

1 the portion of the penalty that is not based upon the economic
2 benefit of non-compliance.

3 (j) In addition to an other remedy or penalty that may
4 apply, whether civil or criminal, any person who violates
5 Section 22.52 of this Act shall be liable for an additional
6 civil penalty of up to 3 times the gross amount of any
7 pecuniary gain resulting from the violation.

8 (k) In addition to remedies afforded the State of Illinois
9 under this Act, a unit of local government is specifically
10 authorized to adopt an ordinance imposing a civil penalty
11 against any person or organization owning or leasing property
12 that releases any hazardous substance, as defined in Section
13 3.215 of this Act, or any other contaminant that the unit of
14 local government finds injures the public health and the safety
15 of the community. The penalty may not exceed \$50,000 for the
16 violation and an additional \$10,000 for each day during which
17 the violation continues.

18 (Source: P.A. 95-331, eff. 8-21-07; 96-603, eff. 8-24-09;
19 96-737, eff. 8-25-09; 96-1000, eff. 7-2-10; 96-1416, eff.
20 7-30-10.)

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.