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RWH/JA

CHAPTER 4
(CORRECTED COPY)

AN ACT concerning civil penalties for certain natural gas or hazardous liquid facility safety violations, and amending various parts of the statutory law.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 14 of P.L.1994, c.118 (C.48:2-86) is amended to read as follows:

C.48:2-86 Violation of act; injunction; civil penalties.

14. a. Whenever it appears to the board that a person has violated any provision of P.L.1994, c.118 (C.48:2-73 et al.), or any rule, regulation, or order adopted pursuant thereto, it may issue an order specifying the provision of P.L.1994, c.118, (C.48:2-73 et al.) or the rule, regulation, or order of which the person is in violation, citing the action which constituted the violation, ordering abatement of the violation, and giving notice to the person of the person's right to a hearing on the matters contained in the order. The order shall be effective upon receipt and any person to whom the order is directed shall comply with the order immediately.

b. The board may institute an action or proceeding in the Superior Court for injunctive and other relief for any violation of P.L.1994, c.118 (C.48:2-73 et al.), or of any rule, regulation, or order adopted pursuant to P.L.1994, c.118 (C.48:2-73 et al.) and the court may proceed in the action in a summary manner. In such a proceeding the court may grant temporary or interlocutory relief, notwithstanding the provisions of R.S.48:2-24.

The relief may include, singly or in combination:

(1) A temporary or permanent injunction; and
(2) Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and litigating the case under this subsection. An assessment of the violator under this subsection shall be paid to the State Treasurer.

The board or an affected operator may institute an action in the Superior Court to enjoin a person whose repeated failure to comply with the provisions of P.L.1994, c.118 (C.48:2-73 et al.) constitutes a threat to public safety from engaging in any further excavation or demolition work within the State, except under terms and conditions as the Superior Court may prescribe to ensure the safety of the public.

c. The provisions of section 16 of P.L.1994, c.118 (C.48:2-88) to the contrary notwithstanding, a person who is determined by the board, after notice and opportunity to be heard, to have violated any provision of P.L.1994, c.118 (C.48:2-73 et al.) or any rule, regulation, or order adopted pursuant thereto with respect to a natural gas underground pipeline or distribution facility, or a hazardous liquid underground pipeline or distribution facility, shall be liable to a civil penalty not to exceed \$200,000 for each violation for each day the violation continues, except that the maximum civil penalty may not exceed \$2,000,000 for any related series of violations.

Any civil penalty imposed pursuant to this subsection may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in compromise, the board shall consider the nature, circumstances, and gravity of the violation; the degree of the violator's culpability; any history of prior violations; the prospective effect of the penalty on the ability of the violator to conduct business; any good faith effort on the part of the violator in attempting to achieve compliance; the violator's ability to pay the penalty; and other factors the board determines to be appropriate.

The amount of the penalty when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the State to the person charged, or may be recovered, if necessary, in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court shall have jurisdiction to enforce the provisions of the "Penalty Enforcement Law of 1999" in connection with P.L.1994, c.118 (C.48:2-73 et al.).

d. Pursuit of any remedy specified in this section shall not preclude the pursuit of any other remedy, including any civil remedy for damage to an operator's underground facilities or for damage to a person's property, provided by any other law. Administrative and judicial remedies provided in this section may be pursued simultaneously.

2. Section 1 of P.L.1989, c.80 (C.48:9-33) is amended to read as follows:

C.48:9-33 Penalties for violation of natural gas pipelines safety.

1. a. Any person who is determined by the Board of Public Utilities, after notice and opportunity to be heard, to have violated the provisions of any law, rule, regulation, or order relating to natural gas pipeline safety shall be subject to a civil penalty of not more than \$200,000 for each violation for each day that the violation persists, except that the maximum civil penalty shall not exceed \$2,000,000 for any related series of violations.

b. Any civil penalty imposed pursuant to subsection a. of this section may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in compromise, the board shall consider the nature, circumstances, and gravity of the violation; the degree of the violator's culpability; any history of prior violations; the prospective effect of the penalty on the ability of the violator to conduct business; any good faith on the part of the violator in attempting to achieve compliance; the violator's ability to pay the penalty; and any other factors justice may require. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the State to the person charged, or may be recovered in a summary proceeding instituted by the board in Superior Court pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

c. Whenever it shall appear to the board that a person has violated, intends to violate, or will violate any provision of any law, rule, regulation, or order relating to natural gas pipeline safety, the board may institute a civil action in Superior Court for injunctive relief or for any other appropriate relief under the circumstances, and the court may proceed on the action in a summary manner.

3. Section 1 of P.L.1971, c.62 (C.48:10-11) is amended to reads as follows:

C.48:10-11 Penalties.

1. a. Any person who violates any provision of the Natural Gas Safety Act, P.L.1952, c.166 (C.48:10-2 et seq.) as amended and supplemented or any order, rule, or regulation issued thereunder, shall be subject to a civil penalty of not more than \$200,000 for each violation for each day that the violation persists; however, the maximum civil penalty shall not exceed \$2,000,000 for any related series of violations.

b. Any civil penalty imposed pursuant to subsection a. of this section may be compromised by the Board of Public Utilities. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person

charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the State to the person charged or may be recovered in a summary proceeding in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of P.L.1952, c.166 (C.48:10-2 et seq.).

4. Notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Board of Public Utilities shall, within 180 days after the enactment of P.L.2019, c.4 (C.48:2-86 et al.), implement the provisions of this act. The standards adopted by the Board of Public Utilities shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and may, thereafter, be amended, adopted, or readopted by the board in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

5. This act shall take effect immediately.

Approved January 31, 2019.

SENATE, No. 679

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Senator CHRISTOPHER "KIP" BATEMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Senator BOB SMITH

District 17 (Middlesex and Somerset)

SYNOPSIS

Increases civil penalties for certain natural gas or hazardous liquid facility safety violations.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning civil penalties for certain natural gas or
2 hazardous liquid facility safety violations, and amending various
3 parts of the statutory law.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. Section 14 of P.L.1994, c.118 (C.48:2-86) is amended to
9 read as follows:

10 14. a. Whenever it appears to the board that a person has
11 violated any provision of P.L.1994, c.118 (C.48:2-73 et al.), or any
12 rule, regulation, or order adopted pursuant thereto, it may issue an
13 order specifying the provision **[or provisions]** of P.L.1994, c.118,
14 (C.48:2-73 et al.) or the rule, regulation, or order of which the
15 person is in violation, citing the action which constituted the
16 violation, ordering abatement of the violation, and giving notice to
17 the person of **[his]** the person's right to a hearing on the matters
18 contained in the order. **[Such]** The order shall be effective upon
19 receipt and any person to whom **[such]** the order is directed shall
20 comply with the order immediately.

21 b. The board may institute an action or proceeding in the
22 Superior Court for injunctive and other relief for any violation of
23 P.L.1994, c.118 (C.48:2-73 et al.), or of any rule **[or]** , regulation,
24 or order adopted pursuant to P.L.1994, c.118 (C.48:2-73 et al.) and
25 the court may proceed in the action in a summary manner. In **[any]**
26 such a proceeding the court may grant temporary or interlocutory
27 relief, notwithstanding the provisions of R.S.48:2-24.

28 **[Such]** The relief may include, singly or in combination:

29 (1) A temporary or permanent injunction; and

30 (2) Assessment of the violator for the costs of any investigation,
31 inspection, or monitoring survey which led to the establishment of
32 the violation, and for the reasonable costs of preparing and
33 litigating the case under this subsection. **[Assessments]** An
34 assessment of the violator under this subsection shall be paid to the
35 State Treasurer.

36 The board or an affected operator may institute an action in the
37 Superior Court to enjoin a person whose repeated failure to comply
38 with the provisions of P.L.1994, c.118 (C.48:2-73 et al.) constitutes
39 a threat to public safety from engaging in any further excavation or
40 demolition work within the State, except under **[such]** terms and
41 conditions as the Superior Court may prescribe to ensure the safety
42 of the public.

43 c. The provisions of section 16 of P.L.1994, c.118 (C.48:2-88)
44 to the contrary notwithstanding, a person who is determined by the

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 board, after notice and opportunity to be heard, to have violated any
2 provision of P.L.1994, c.118 (C.48:2-73 et al.) or any rule,
3 regulation, or order adopted pursuant thereto with respect to a
4 natural gas underground pipeline or distribution facility, or a
5 hazardous liquid underground pipeline or distribution facility, shall
6 be liable to a civil penalty not to exceed ~~[\$100,000]~~ \$200,000 for
7 each violation for each day the violation continues, except that the
8 maximum civil penalty may not exceed ~~[\$1,000,000]~~ \$2,000,000
9 for any related series of violations.

10 Any civil penalty imposed pursuant to this subsection may be
11 compromised by the board. In determining the amount of the
12 penalty, or the amount agreed upon in compromise, the board shall
13 consider the nature, circumstances, and gravity of the violation; the
14 degree of the violator's culpability; any history of prior violations;
15 the prospective effect of the penalty on the ability of the violator to
16 conduct business; any good faith effort on the part of the violator in
17 attempting to achieve compliance; the violator's ability to pay the
18 penalty; and other factors the board determines to be appropriate.

19 The amount of the penalty when finally determined, or the
20 amount agreed upon in compromise, may be deducted from any
21 sums owing by the State to the person charged, or may be
22 recovered, if necessary, in a summary proceeding pursuant to the
23 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
24 et seq.). The Superior Court shall have jurisdiction to enforce the
25 provisions of the "Penalty Enforcement Law of 1999" in connection
26 with P.L.1994, c.118 (C.48:2-73 et al.).

27 d. Pursuit of any remedy specified in this section shall not
28 preclude the pursuit of any other remedy, including any civil
29 remedy for damage to an operator's underground facilities or for
30 damage to a person's property, provided by any other law.
31 Administrative and judicial remedies provided in this section may
32 be pursued simultaneously.

33 (cf: P.L.2007, c.118, s.1)

34

35 2. Section 1 of P.L.1989, c.80 (C.48:9-33) is amended to read
36 as follows:

37 1. a. Any person who is determined by the Board of Public
38 Utilities, after notice and opportunity to be heard, to have violated
39 the provisions of any law, rule, regulation, or order relating to
40 natural gas pipeline safety shall be subject to a civil penalty of not
41 more than ~~[\$100,000]~~ \$200,000 for each ~~[such]~~ violation for each
42 day that the violation persists, except that the maximum civil
43 penalty shall not exceed ~~[\$1,000,000]~~ \$2,000,000 for any related
44 series of violations.

45 b. Any civil penalty imposed pursuant to subsection a. of this
46 section may be compromised by the board. In determining the
47 amount of the penalty, or the amount agreed upon in compromise,
48 the board shall consider the nature, circumstances, and gravity of

1 the violation; the degree of the violator's culpability; any history of
2 prior violations; the prospective effect of the penalty on the ability
3 of the violator to conduct business; any good faith on the part of the
4 violator in attempting to achieve compliance; **[his]** the violator's
5 ability to pay the penalty; and any other factors justice may require.
6 The amount of the penalty, when finally determined, or the amount
7 agreed upon in compromise, may be deducted from any sums owing
8 by the State to the person charged, or may be recovered in a
9 summary proceeding instituted by the board in Superior Court **[in**
10 **accordance with]** pursuant to the "Penalty Enforcement Law of
11 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

12 c. Whenever it shall appear to the board that a person has
13 violated, intends to violate, or will violate any provision of any law,
14 rule, regulation, or order relating to natural gas pipeline safety, the
15 board may institute a civil action in Superior Court for injunctive
16 relief or for any other appropriate relief under the circumstances,
17 and the court may proceed on **[any such]** the action in a summary
18 manner.
19 (cf: P.L.2007, c.118, s.2)

20

21 3. Section 1 of P.L.1971, c.62 (C.48:10-11) is amended to
22 read as follows:

23 1. a. Any person who violates any provision of the Natural Gas
24 Safety Act, P.L.1952, c.166 (C.48:10-2 et seq.) as amended and
25 supplemented or any order, rule, or regulation issued thereunder,
26 shall be subject to a civil penalty of not more than **[\$100,000]**
27 \$200,000 for each violation for each day that the violation persists;
28 however, the maximum civil penalty shall not exceed **[\$1,000,000]**
29 \$2,000,000 for any related series of violations.

30 b. Any civil penalty imposed pursuant to subsection a. of this
31 section may be compromised by the Board of Public Utilities. In
32 determining the amount of the penalty, or the amount agreed upon
33 in compromise, the appropriateness of the penalty to the size of the
34 business of the person charged, the gravity of the violation, and the
35 good faith of the person charged in attempting to achieve
36 compliance, after notification of a violation, shall be considered.
37 The amount of the penalty, when finally determined, or the amount
38 agreed upon in compromise, may be deducted from any sums owing
39 by the State to the person charged or may be recovered in a
40 summary proceeding in accordance with the "Penalty Enforcement
41 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior
42 Court and the municipal court shall have jurisdiction to enforce the
43 provisions of P.L.1952, c.166 (C.48:10-2 et seq.).

44 (cf: P.L.2007, c.118, s.3)

45

46 4. (New section) Notwithstanding any provisions of the
47 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et

1 seq.), the Board of Public Utilities shall, within 180 days after the
2 enactment of P.L. , c. (C.) (pending before the Legislature
3 as this bill), implement the provisions of this act. The standards
4 adopted by the Board of Public Utilities shall be effective as
5 regulations immediately upon filing with the Office of
6 Administrative Law and shall be effective for a period not to exceed
7 18 months, and may, thereafter, be amended, adopted, or readopted
8 by the board in accordance with the provisions of the
9 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
10 seq.).

11

12 5. This act shall take effect immediately.

13

14

15

STATEMENT

16

17 This bill increases civil penalties for safety violations with
18 respect to natural gas pipelines and distribution facilities and
19 hazardous liquid underground pipeline and distribution facilities.

20 Under current law, a violator is subject to a civil penalty of not
21 more than \$100,000 for each violation for each day that the
22 violation persists, with the civil penalty not exceeding \$1,000,000
23 for any related series of violations. Under the bill, a violator is
24 subject to a civil penalty of not more than \$200,000 for each
25 violation for each day that the violation persists, with the civil
26 penalty not exceeding \$2,000,000 for any related series of
27 violations.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 679

STATE OF NEW JERSEY

DATED: DECEMBER 10, 2018

The Assembly Appropriations Committee reports favorably Senate Bill No. 679.

This bill increases civil penalties for safety violations with respect to natural gas pipelines and distribution facilities and hazardous liquid underground pipeline and distribution facilities.

Under current law, a violator is subject to a civil penalty of not more than \$100,000 for each violation for each day that the violation persists, with the civil penalty not exceeding \$1,000,000 for any related series of violations. The bill changes current law to provide that a violator is subject to a civil penalty of not more than \$200,000 for each violation for each day that the violation persists, with the civil penalty not exceeding \$2,000,000 for any related series of violations.

As reported, this bill is identical to Assembly Bill No. 2614, as also reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) finds that the bill has the potential of increasing annual State revenue collections. The bill doubles the maximum civil penalties the Board of Public Utilities (BPU) is authorized to impose for safety violations with respect to natural gas pipelines and distribution facilities and hazardous liquid underground pipelines and distribution facilities. An increase in maximum penalty amounts, however, does not necessarily mean that the BPU will impose civil penalties in excess of the current limits in any given fiscal year after the bill takes effect. To that effect, the BPU reports that the average revenue from fines affected by the bill is approximately \$1 million per year, but consists largely of minor violations where the fine amount would not change with larger maximum penalty amounts. In a year in which a major incident occurs, however, the revenue from that larger incident could be an additional \$1 million or more under the bill relative to current law but those incidents are infrequent. Accordingly, the OLS cannot determine to what extent the bill will change BPU fine-setting decisions.

SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

SENATE, No. 679

STATE OF NEW JERSEY

DATED: OCTOBER 18, 2018

The Senate Economic Growth Committee reports favorably Senate Bill No. 679.

As reported, this bill increases civil penalties for safety violations with respect to natural gas pipelines and distribution facilities and hazardous liquid underground pipelines and distribution facilities.

Under current law, a violator is subject to a civil penalty of not more than \$100,000 for each violation for each day that the violation persists, with the civil penalty not exceeding \$1,000,000 for any related series of violations. Under the bill, a violator is subject to a civil penalty of not more than \$200,000 for each violation for each day that the violation persists, with the civil penalty not exceeding \$2,000,000 for any related series of violations.

This bill was pre-filed for introduction in the 2018-2019 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 679

STATE OF NEW JERSEY

DATED: OCTOBER 22, 2018

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 679.

This bill increases civil penalties for safety violations with respect to natural gas pipelines and distribution facilities and hazardous liquid underground pipeline and distribution facilities.

Under current law, a violator is subject to a civil penalty of not more than \$100,000 for each violation for each day that the violation persists, with the civil penalty not exceeding \$1,000,000 for any related series of violations. The bill changes current law to provide that a violator is subject to a civil penalty of not more than \$200,000 for each violation for each day that the violation persists, with the civil penalty not exceeding \$2,000,000 for any related series of violations.

FISCAL IMPACT:

The Office of Legislative Services (OLS) finds that the bill has the potential of increasing annual State revenue collections. The bill doubles the maximum civil penalties the Board of Public Utilities (BPU) is authorized to impose for safety violations with respect to natural gas pipelines and distribution facilities and hazardous liquid underground pipelines and distribution facilities. An increase in maximum penalty amounts, however, does not necessarily mean that the BPU will impose civil penalties in excess of the current limits in any given fiscal year after the bill takes effect. To that effect, the BPU reports that the average revenue from fines affected by the bill is approximately \$1 million per year, but consists largely of minor violations where the fine amount would not change with larger maximum penalty amounts. In a year in which a major incident occurs, however, the revenue from that larger incident could be an additional \$1 million or more under the bill relative to current law but those incidents are infrequent. Accordingly, the OLS cannot determine to what extent the bill will change BPU fine-setting decisions.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 679
STATE OF NEW JERSEY
218th LEGISLATURE

DATED: OCTOBER 29, 2018

SUMMARY

Synopsis: Increases civil penalties for certain natural gas or hazardous liquid facility safety violations.

Type of Impact: Increased Intermittent State Revenue.

Agencies Affected: Board of Public Utilities.

Office of Legislative Services Estimate

Fiscal Impact	
Intermittent State Revenue Increase	Indeterminate

- The Office of Legislative Services (OLS) finds that this bill will likely cause an intermittent increase in State revenues from doubling the maximum civil penalties the Board of Public Utilities (BPU) may impose for safety violations with respect to natural gas and hazardous liquid underground pipelines and distribution facilities.
- The OLS lacks the informational basis for quantifying the revenue gain, given that the bill does not change the BPU's substantial discretion in setting penalty amounts. As a result, the authorization of higher penalty amounts will not automatically increase penalty assessments relative to current law.
- The BPU reported previously that the average revenue from fines affected by the bill approximated \$1 million per year, consisting largely of relatively minor fines whose amounts fell well below the current law maxima. In a year in which a major incident occurs, however, the revenue from that larger incident could be an additional \$1 million or more under the bill relative to current law but those incidents are infrequent.

BILL DESCRIPTION

This bill doubles the maximum civil penalty amounts the BPU may impose for safety violations with respect to natural gas and hazardous liquid underground pipelines and distribution facilities. The maximum increases from \$100,000 to \$200,000 for each day a

violation persists, subject to a cap on the total penalty amount for any related series of violations that rises from \$1 million to \$2 million.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS finds that doubling the maximum civil penalties the BPU may impose for certain safety violations will likely cause an intermittent increase in State revenues. The OLS lacks the informational basis for quantifying the revenue gain, given that the bill does not change the BPU's substantial discretion in setting penalty amounts. As a result, the authorization of higher penalty amounts will not automatically increase penalty assessments relative to current law.

The civil violations covered by the bill are relatively rare, and the board is permitted, in its discretion, to set the amount of civil penalties below statutory maxima based on various factors relating to the seriousness of the violations and the good faith of the violator in complying with the law. As a result, it is likely that this bill will only increase penalty amounts in cases of the most serious or negligent violations.

The BPU reported previously that the average revenue from fines affected by the bill approximated \$1 million per year, consisting largely of relatively minor fines whose amounts fell well below the current law maxima. In a year in which a major incident occurs, however, the revenue from that larger incident could be an additional \$1 million or more under the bill relative to current law but those incidents are infrequent.

In addition, it is possible that the greater maximum penalties will cause a greater level of attention to safety practices by owners of concerned underground facilities. That greater level of attention could result in fewer safety violations and, by extension, reduced State penalty collections. It is not clear whether that deterrent effect could be large enough to reduce State revenue relative to existing collections from safety violations.

Section: Authorities, Utilities, Transportation and Communications

*Analyst: Patrick Brennan
Lead Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY, No. 2614

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED FEBRUARY 1, 2018

Sponsored by:

Assemblyman WAYNE P. DEANGELO

District 14 (Mercer and Middlesex)

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Assemblyman JOE DANIELSEN

District 17 (Middlesex and Somerset)

Co-Sponsored by:

Assemblywoman Pinkin

SYNOPSIS

Increases civil penalties for certain natural gas or hazardous liquid facility safety violations.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/18/2018)

1 AN ACT concerning civil penalties for certain natural gas or
2 hazardous liquid facility safety violations, and amending various
3 parts of the statutory law.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 14 of P.L.1994, c.118 (C.48:2-86) is amended to
9 read as follows:

10 14. a. Whenever it appears to the board that a person has
11 violated any provision of P.L.1994, c.118 (C.48:2-73 et al.), or any
12 rule, regulation, or order adopted pursuant thereto, it may issue an
13 order specifying the provision **[or provisions]** of P.L.1994, c.118,
14 (C.48:2-73 et al.) or the rule, regulation, or order of which the
15 person is in violation, citing the action which constituted the
16 violation, ordering abatement of the violation, and giving notice to
17 the person of **[his]** the person's right to a hearing on the matters
18 contained in the order. **[Such]** The order shall be effective upon
19 receipt and any person to whom **[such]** the order is directed shall
20 comply with the order immediately.

21 b. The board may institute an action or proceeding in the
22 Superior Court for injunctive and other relief for any violation of
23 P.L.1994, c.118 (C.48:2-73 et al.), or of any rule **[or]** , regulation,
24 or order adopted pursuant to P.L.1994, c.118 (C.48:2-73 et al.) and
25 the court may proceed in the action in a summary manner. In **[any]**
26 such a proceeding the court may grant temporary or interlocutory
27 relief, notwithstanding the provisions of R.S.48:2-24.

28 **[Such]** The relief may include, singly or in combination:

29 (1) A temporary or permanent injunction; and

30 (2) Assessment of the violator for the costs of any investigation,
31 inspection, or monitoring survey which led to the establishment of
32 the violation, and for the reasonable costs of preparing and
33 litigating the case under this subsection. **[Assessments]** An
34 assessment of the violator under this subsection shall be paid to the
35 State Treasurer.

36 The board or an affected operator may institute an action in the
37 Superior Court to enjoin a person whose repeated failure to comply
38 with the provisions of P.L.1994, c.118 (C.48:2-73 et al.) constitutes
39 a threat to public safety from engaging in any further excavation or
40 demolition work within the State, except under **[such]** terms and
41 conditions as the Superior Court may prescribe to ensure the safety
42 of the public.

43 c. The provisions of section 16 of P.L.1994, c.118 (C.48:2-88)
44 to the contrary notwithstanding, a person who is determined by the

EXPLANATION – Matter enclosed in bold-faced brackets **[thus] in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 board, after notice and opportunity to be heard, to have violated any
2 provision of P.L.1994, c.118 (C.48:2-73 et al.) or any rule,
3 regulation, or order adopted pursuant thereto with respect to a
4 natural gas underground pipeline or distribution facility, or a
5 hazardous liquid underground pipeline or distribution facility, shall
6 be liable to a civil penalty not to exceed **[\$100,000]** \$200,000 for
7 each violation for each day the violation continues, except that the
8 maximum civil penalty may not exceed **[\$1,000,000]** \$2,000,000
9 for any related series of violations.

10 Any civil penalty imposed pursuant to this subsection may be
11 compromised by the board. In determining the amount of the
12 penalty, or the amount agreed upon in compromise, the board shall
13 consider the nature, circumstances, and gravity of the violation; the
14 degree of the violator's culpability; any history of prior violations;
15 the prospective effect of the penalty on the ability of the violator to
16 conduct business; any good faith effort on the part of the violator in
17 attempting to achieve compliance; the violator's ability to pay the
18 penalty; and other factors the board determines to be appropriate.

19 The amount of the penalty when finally determined, or the
20 amount agreed upon in compromise, may be deducted from any
21 sums owing by the State to the person charged, or may be
22 recovered, if necessary, in a summary proceeding pursuant to the
23 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
24 et seq.). The Superior Court shall have jurisdiction to enforce the
25 provisions of the "Penalty Enforcement Law of 1999" in connection
26 with P.L.1994, c.118 (C.48:2-73 et al.).

27 d. Pursuit of any remedy specified in this section shall not
28 preclude the pursuit of any other remedy, including any civil
29 remedy for damage to an operator's underground facilities or for
30 damage to a person's property, provided by any other law.
31 Administrative and judicial remedies provided in this section may
32 be pursued simultaneously.
33 (cf: P.L.2007, c.118, s.1)
34

35 2. Section 1 of P.L.1989, c.80 (C.48:9-33) is amended to read
36 as follows:

37 1. a. Any person who is determined by the Board of Public
38 Utilities, after notice and opportunity to be heard, to have violated
39 the provisions of any law, rule, regulation, or order relating to
40 natural gas pipeline safety shall be subject to a civil penalty of not
41 more than **[\$100,000]** \$200,000 for each **[such]** violation for each
42 day that the violation persists, except that the maximum civil
43 penalty shall not exceed **[\$1,000,000]** \$2,000,000 for any related
44 series of violations.

45 b. Any civil penalty imposed pursuant to subsection a. of this
46 section may be compromised by the board. In determining the
47 amount of the penalty, or the amount agreed upon in compromise,
48 the board shall consider the nature, circumstances, and gravity of

1 the violation; the degree of the violator's culpability; any history of
2 prior violations; the prospective effect of the penalty on the ability
3 of the violator to conduct business; any good faith on the part of the
4 violator in attempting to achieve compliance; **his** the violator's
5 ability to pay the penalty; and any other factors justice may require.
6 The amount of the penalty, when finally determined, or the amount
7 agreed upon in compromise, may be deducted from any sums owing
8 by the State to the person charged, or may be recovered in a
9 summary proceeding instituted by the board in Superior Court **in**
10 **accordance with** pursuant to the "Penalty Enforcement Law of
11 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

12 c. Whenever it shall appear to the board that a person has
13 violated, intends to violate, or will violate any provision of any law,
14 rule, regulation, or order relating to natural gas pipeline safety, the
15 board may institute a civil action in Superior Court for injunctive
16 relief or for any other appropriate relief under the circumstances,
17 and the court may proceed on **any such** the action in a summary
18 manner.
19 (cf: P.L.2007, c.118, s.2)

20
21 3. Section 1 of P.L.1971, c.62 (C.48:10-11) is amended to
22 read as follows:

23 1. a. Any person who violates any provision of the Natural Gas
24 Safety Act, P.L.1952, c.166 (C.48:10-2 et seq.) as amended and
25 supplemented or any order, rule, or regulation issued thereunder,
26 shall be subject to a civil penalty of not more than **[\$100,000]**
27 \$200,000 for each violation for each day that the violation persists;
28 however, the maximum civil penalty shall not exceed **[\$1,000,000]**
29 \$2,000,000 for any related series of violations.

30 b. Any civil penalty imposed pursuant to subsection a. of this
31 section may be compromised by the Board of Public Utilities. In
32 determining the amount of the penalty, or the amount agreed upon
33 in compromise, the appropriateness of the penalty to the size of the
34 business of the person charged, the gravity of the violation, and the
35 good faith of the person charged in attempting to achieve
36 compliance, after notification of a violation, shall be considered.
37 The amount of the penalty, when finally determined, or the amount
38 agreed upon in compromise, may be deducted from any sums owing
39 by the State to the person charged or may be recovered in a
40 summary proceeding in accordance with the "Penalty Enforcement
41 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior
42 Court and the municipal court shall have jurisdiction to enforce the
43 provisions of P.L.1952, c.166 (C.48:10-2 et seq.).
44 (cf: P.L.2007, c.118, s.3)

45
46 4. Notwithstanding any provisions of the "Administrative
47 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Board of

1 Public Utilities shall, within 180 days after the enactment of
2 P.L. , c. (C.) (pending before the Legislature as this bill),
3 implement the provisions of this act. The standards adopted by the
4 Board of Public Utilities shall be effective as regulations
5 immediately upon filing with the Office of Administrative Law and
6 shall be effective for a period not to exceed 18 months, and may,
7 thereafter, be amended, adopted, or readopted by the board in
8 accordance with the provisions of the "Administrative Procedure
9 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

10

11 5. This act shall take effect immediately.

12

13

14

STATEMENT

15

16 This bill increases civil penalties for safety violations with
17 respect to natural gas pipelines and distribution facilities and
18 hazardous liquid underground pipeline and distribution facilities.

19 Under current law, a violator is subject to a civil penalty of not
20 more than \$100,000 for each violation for each day that the
21 violation persists, with the civil penalty not exceeding \$1,000,000
22 for any related series of violations. Under the bill, a violator is
23 subject to a civil penalty of not more than \$200,000 for each
24 violation for each day that the violation persists, with the civil
25 penalty not exceeding \$2,000,000 for any related series of
26 violations.

ASSEMBLY TELECOMMUNICATIONS AND UTILITIES
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2614

STATE OF NEW JERSEY

DATED: OCTOBER 22, 2018

The Assembly Telecommunications and Utilities Committee reports favorably Assembly Bill No. 2614.

As reported, this bill increases civil penalties for safety violations with respect to natural gas pipelines and distribution facilities and hazardous liquid underground pipelines and distribution facilities.

Under current law, a violator is subject to a civil penalty of not more than \$100,000 for each violation for each day that the violation persists, with the civil penalty not exceeding \$1,000,000 for any related series of violations. Under the bill, a violator is subject to a civil penalty of not more than \$200,000 for each violation for each day that the violation persists, with the civil penalty not exceeding \$2,000,000 for any related series of violations.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2614

STATE OF NEW JERSEY

DATED: DECEMBER 10, 2018

The Assembly Appropriations Committee reports favorably Assembly Bill No. 2614.

This bill increases civil penalties for safety violations with respect to natural gas pipelines and distribution facilities and hazardous liquid underground pipelines and distribution facilities.

Under current law, a violator is subject to a civil penalty of not more than \$100,000 for each violation for each day that the violation persists, with the civil penalty not exceeding \$1,000,000 for any related series of violations. Under the bill, a violator is subject to a civil penalty of not more than \$200,000 for each violation for each day that the violation persists, with the civil penalty not exceeding \$2,000,000 for any related series of violations.

As reported, this bill is identical to Senate Bill No. 679, as also reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) finds that the bill has the potential of increasing annual State revenue collections. The bill doubles the maximum civil penalties the Board of Public Utilities (BPU) is authorized to impose for safety violations with respect to natural gas pipelines and distribution facilities and hazardous liquid underground pipelines and distribution facilities. An increase in maximum penalty amounts, however, does not necessarily mean that the BPU will impose civil penalties in excess of the current limits in any given fiscal year after the bill takes effect. To that effect, the BPU reports that the average revenue from fines affected by the bill is approximately \$1 million per year, but consists largely of minor violations where the fine amount would not change with larger maximum penalty amounts. In a year in which a major incident occurs, however, the revenue from that larger incident could be an additional \$1 million or more under the bill relative to current law but those incidents are infrequent. Accordingly, the OLS cannot determine to what extent the bill will change BPU fine-setting decisions.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 2614
STATE OF NEW JERSEY
218th LEGISLATURE

DATED: DECEMBER 11, 2018

SUMMARY

Synopsis: Increases civil penalties for certain natural gas or hazardous liquid facility safety violations.

Type of Impact: Increased Intermittent State Revenue.

Agencies Affected: Board of Public Utilities.

Office of Legislative Services Estimate

Fiscal Impact	
Intermittent State Revenue Increase	Indeterminate

- The Office of Legislative Services (OLS) finds that this bill will likely cause an intermittent increase in State revenues from doubling the maximum civil penalties the Board of Public Utilities (BPU) may impose for safety violations with respect to natural gas and hazardous liquid underground pipelines and distribution facilities.
- The OLS lacks the informational basis for quantifying the revenue gain, given that the bill does not change the BPU's substantial discretion in setting penalty amounts. As a result, the authorization of higher penalty amounts will not automatically increase penalty assessments relative to current law.
- The BPU reported previously that the average revenue from fines affected by the bill approximated \$1 million per year, consisting largely of relatively minor fines whose amounts fell well below the current law maxima. In a year in which a major incident occurs, however, the revenue from that larger incident could be an additional \$1 million or more under the bill relative to current law but those incidents are infrequent.

BILL DESCRIPTION

This bill doubles the maximum civil penalty amounts the BPU may impose for safety violations with respect to natural gas and hazardous liquid underground pipelines and distribution facilities. The maximum increases from \$100,000 to \$200,000 for each day a

violation persists, subject to a cap on the total penalty amount for any related series of violations that rises from \$1 million to \$2 million.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS finds that doubling the maximum civil penalties the BPU may impose for certain safety violations will likely cause an intermittent increase in State revenues. The OLS lacks the informational basis for quantifying the revenue gain, given that the bill does not change the BPU's substantial discretion in setting penalty amounts. As a result, the authorization of higher penalty amounts will not automatically increase penalty assessments relative to current law.

The civil violations covered by the bill are relatively rare, and the board is permitted, in its discretion, to set the amount of civil penalties below statutory maxima based on various factors relating to the seriousness of the violations and the good faith of the violator in complying with the law. As a result, it is likely that this bill will only increase penalty amounts in cases of the most serious or negligent violations.

The BPU reported previously that the average revenue from fines affected by the bill approximated \$1 million per year, consisting largely of relatively minor fines whose amounts fell well below the current law maxima. In a year in which a major incident occurs, however, the revenue from that larger incident could be an additional \$1 million or more under the bill relative to current law but those incidents are infrequent.

In addition, it is possible that the greater maximum penalties will cause a greater level of attention to safety practices by owners of concerned underground facilities. That greater level of attention could result in fewer safety violations and, by extension, reduced State penalty collections. It is not clear whether that deterrent effect could be large enough to reduce State revenue relative to existing collections from safety violations.

Section: Authorities, Utilities, Transportation and Communications

*Analyst: Patrick Brennan
Lead Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).



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Newark, N.J.

Governor Murphy Takes Action on Legislation

01/31/2019

TRENTON – Today, Governor Phil Murphy signed the following bills into law:

A2164 (Wimberly, Schaer, Lampitt/Cruz-Perez, Beach) – “Healthy Small Food Retailer Act.”

[Copy of Statement on A2164](#)

A2190 (Lampitt, Downey, Thomson/Ruiz, Cunningham) – Requires school districts to incorporate instruction in grades six through 12 on law and meaning of consent for physical contact and sexual activity as part of Student Learning Standards in Comprehensive Health and Physical Education.

A2436 (Benson, Swain, Tully/Bucco, Lagana) – Requires certain school district transportation supervisors to complete educational program.

A2442 (Benson, Rooney, Downey/Singer, Gopal) – Establishes reciprocity requirements for out-of-State certified nurse aides to practice in New Jersey.

A2732 (Andrzejczak, Dancer/Van Drew) – Clarifies that use of propane-powered noise making device is allowed as non-lethal method of wildlife control on farmland.

A3443 (Schaer, DeCroce, Calabrese/Sarlo) – Concerns licensure of persons possessing barbering license in another state or foreign country.

A3666 (DeAngelo, Houghtaling/Madden, Lagana, Addiego, Vitale) – Requires public works contractors to have certain certifications; requires certain contractors to participate in apprenticeship program.

A3772 (DeAngelo, Quijano/Beach) – Provides for licensing of pool and spa service contractors, and pool and spa builders and installers.

A4191 (Andrzejczak, Land/Van Drew, Holzapfel) – Revises requirements for swimming pools to comply with certain regulations concerning lifeguards, inspections, and circulation systems.

[Copy of Statement on A4191](#)

A4224 (Tully, Swain, Benson/Lagana, Greenstein) – Requires study of safety of school bus passengers in certain emergency situations, including school bus accidents; appropriates \$250,000.

A4299 (Benson, DeAngelo/Greenstein, Turner) – Designates portion of Interstate Highway Route 195 in Mercer County as “Francis J. McManimon Highway.”

A4579 (Lopez, Pinkin/Sweeney, Oroho) – Appropriates \$28,883,557 in 2003 and 1992 bond act monies for loans for dam restoration and repair projects and inland waters projects.

A4733 (Taliaferro, Houghtaling, Downey/Gopal, Cruz-Perez) – Appropriates \$15,000,000 from constitutionally dedicated CBT revenues to State Agriculture Development Committee for municipal planning incentive grants for farmland preservation purposes.

A4735 (Houghtaling, Verrelli, Taliaferro/Cruz-Perez, Gopal) – Appropriates \$1,591,000 from constitutionally dedicated CBT revenues to State Agriculture Development Committee for grants to certain nonprofit organizations for farmland preservation purposes.

A4736 (Armato, Freiman, Murphy/Oroho, Gopal) – Appropriates \$8,896,229 to State Agriculture Development Committee for farmland preservation purposes.

A4748 (Pintor Marin, Chiaravalloti, Quijano/Greenstein, Bateman) – Authorizes NJ Infrastructure Bank to expend additional sums to make loans for environmental infrastructure projects for FY2019.

A4751 (Freiman, Tully, Murphy/Codey, Bateman) – Appropriates \$15.696 million from constitutionally dedicated CBT revenues to DEP for State acquisition of lands for recreation and conservation purposes, including Blue Acres projects.

S374 (Rice, Singleton/McKeon, Karabinchak, Quijano, Danielsen, Downey, Murphy) – Requires Director of Division of Investment to attempt to use qualified minority and women-owned financial institutions to provide brokerage and investment management services.

[Copy of Statement on S374](#)

S466 (Singer, Addiego/Benson, Coughlin, McKeon) – Requires acceptance of universal dentist application for participation form by dental plan carriers.

S679 (Bateman, Smith/DeAngelo, Mukherji, Danielsen) – Increases civil penalties for certain natural gas or hazardous liquid facility safety violations.

S1484 (Singleton/Murphy, Conaway, Benson) – "Antwan's Law"; reduces speed limit on Route 130 near Burlington City High School and Wilbur Watts Intermediate School.

S1569 (Weinberg, Ruiz/Gusciora, Eustace, Vainieri-Huttle, Jasey, Downey) – Requires boards of education to include instruction, and adopt instructional materials, that accurately portray political, economic, and social contributions of persons with disabilities and lesbian, gay, bisexual, and transgender people.

S2518 (Cryan/Quijano, Vainieri-Huttle, Wimberly) – Excludes certain out-of-State businesses and employees from certain taxes, fees, and business registration requirements when temporarily performing in-State work or services during declared disaster or emergency.

S2665 (Pou, Cruz-Perez/Mukherji, Moriarty, Quijano) – Prohibits use of misleading website to sell event tickets.

S2914 (Lagana, Corrado/Tully, Swain, Downey) – Requires suspension of school bus endorsement on driver's license for certain number of motor vehicle moving violations in certain time period.

S2962 (Pou/Giblin) – Revises "Accountancy Act of 1997."

S2969 (Lagana, Singleton/Mazzeo) – Modifies responsibilities of fantasy sports operators concerning participant funds.

S3186 (Codey/Mukherji, McKnight, Schaer) – Amends list of environmental infrastructure projects approved for long-term funding for FY2019 to include new projects and remove certain projects.

S3209 (Greenstein, Bateman/Pinkin, Burzichelli, Mukherji) – Appropriates \$2.94 million from constitutionally dedicated CBT revenues for recreation and conservation purposes to DEP for State capital and park development

projects.

S3247 (Van Drew/Pintor Marin) – Authorizes State Treasurer to convey surplus real property known as Learning Center in City of Vineland, County of Cumberland.

Additionally, Governor Murphy announced that he has conditionally vetoed the following bills:

A557 (Moriarty, Caputo, Downey/Lagana) – Requires the adoption of nepotism policies by school districts and charter schools.

[Copy of Statement on A557](#)

A1220 (McKeon, Vainieri-Huttle, Jasey, Mukherji/Bateman, Vitale) – “Drama Therapists and Dance/Movement Therapists Licensing Act.”

[Copy of Statement on A1220](#)

Governor Murphy also announced that he has absolute vetoed the following bills:

S784 (Sarlo, Oroho/Burzichelli, Murphy) – Provides a gross income tax exclusion for attorney's fees and costs received in connection with certain unlawful discrimination, unlawful retaliation, and qui tam claims or actions.

[Copy of Statement on S784](#)

S1965 (Sweeney/Mukherji, McKnight, Chiaravalloti) – Allows individual to receive additional lifetime emergency assistance under certain circumstances.

[Copy of Statement on S1965](#)

S2663 (Sweeney, Singleton/Mazzeo, Murphy) – Subjects domestic equity investments of the Division of Investment to certain requirements, imposes requirements related to selection of external managers and protection of public sector jobs.

[Copy of Statement on S2663](#)

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