



Sen. Gary G. Dahl

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1 AMENDMENT TO SENATE BILL 1344

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1344 by replacing  
3 everything after the enacting clause with the following:

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

1 for one offense.

2 A penalty imposed for violation of an ordinance may  
3 include, or consist of, a requirement that the defendant  
4 perform some reasonable public service work such as but not  
5 limited to the picking up of litter in public parks or along  
6 public highways or the maintenance of public facilities.

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

17 (Source: P.A. 95-389, eff. 1-1-08.)

18 Section 10. The Environmental Protection Act is amended by  
19 changing Section 42 as follows:

20 (415 ILCS 5/42) (from Ch. 111 1/2, par. 1042)

21 Sec. 42. Civil penalties.

22 (a) Except as provided in this Section, any person that  
23 violates any provision of this Act or any regulation adopted by  
24 the Board, or any permit or term or condition thereof, or that

1 violates any order of the Board pursuant to this Act, shall be  
2 liable for a civil penalty of not to exceed \$50,000 for the  
3 violation and an additional civil penalty of not to exceed  
4 \$10,000 for each day during which the violation continues; such  
5 penalties may, upon order of the Board or a court of competent  
6 jurisdiction, be made payable to the Environmental Protection  
7 Trust Fund, to be used in accordance with the provisions of the  
8 Environmental Protection Trust Fund Act.

9 (b) Notwithstanding the provisions of subsection (a) of  
10 this Section:

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

16 (2) Any person that violates Section 12(g) of this Act  
17 or any UIC permit or term or condition thereof, or any  
18 filing requirement, regulation or order relating to the  
19 State UIC program for all wells, except Class II wells as  
20 defined by the Board under this Act, shall be liable to a  
21 civil penalty not to exceed \$2,500 per day of violation;  
22 provided, however, that any person who commits such  
23 violations relating to the State UIC program for Class II  
24 wells, as defined by the Board under this Act, shall be  
25 liable to a civil penalty of not to exceed \$10,000 for the  
26 violation and an additional civil penalty of not to exceed

1           \$1,000 for each day during which the violation continues.

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

8           (4) In an administrative citation action under Section  
9           31.1 of this Act, any person found to have violated any  
10          provision of subsection (o) of Section 21 of this Act shall  
11          pay a civil penalty of \$500 for each violation of each such  
12          provision, plus any hearing costs incurred by the Board and  
13          the Agency. Such penalties shall be made payable to 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          (4-5) In an administrative citation action under  
21          Section 31.1 of this Act, any person found to have violated  
22          any provision of subsection (p) of Section 21 of this Act  
23          shall pay a civil penalty of \$1,500 for each violation of  
24          each such provision, plus any hearing costs incurred by the  
25          Board and the Agency, except that the civil penalty amount  
26          shall be \$3,000 for each violation of any provision of

1 subsection (p) of Section 21 that is the person's second or  
2 subsequent adjudication violation of that provision. The  
3 penalties shall be deposited into the Environmental  
4 Protection Trust Fund, to be used in accordance with the  
5 provisions of the Environmental Protection Trust Fund Act;  
6 except that if a unit of local government issued the  
7 administrative citation, 50% of the civil penalty shall be  
8 payable to the unit of local government.

9 (5) Any person who violates subsection 6 of Section  
10 39.5 of this Act or any CAAPP permit, or term or condition  
11 thereof, or any fee or filing requirement, or any duty to  
12 allow or carry out inspection, entry or monitoring  
13 activities, or any regulation or order relating to the  
14 CAAPP shall be liable for a civil penalty not to exceed  
15 \$10,000 per day of violation.

16 (b.5) In lieu of the penalties set forth in subsections (a)  
17 and (b) of this Section, any person who fails to file, in a  
18 timely manner, toxic chemical release forms with the Agency  
19 pursuant to Section 25b-2 of this Act shall be liable for a  
20 civil penalty of \$100 per day for each day the forms are late,  
21 not to exceed a maximum total penalty of \$6,000. This daily  
22 penalty shall begin accruing on the thirty-first day after the  
23 date that the person receives the warning notice issued by the  
24 Agency pursuant to Section 25b-6 of this Act; and the penalty  
25 shall be paid to the Agency. The daily accrual of penalties  
26 shall cease as of January 1 of the following year. All

1 penalties collected by the Agency pursuant to this subsection  
2 shall be deposited into the Environmental Protection Permit and  
3 Inspection Fund.

4 (c) Any person that violates this Act, any rule or  
5 regulation adopted under this Act, any permit or term or  
6 condition of a permit, or any Board order and causes the death  
7 of fish or aquatic life shall, in addition to the other  
8 penalties provided by this Act, be liable to pay to the State  
9 an additional sum for the reasonable value of the fish or  
10 aquatic life destroyed. Any money so recovered shall be placed  
11 in the Wildlife and Fish Fund in the State Treasury.

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

14 (e) The State's Attorney of the county in which the  
15 violation occurred, or the Attorney General, may, at the  
16 request of the Agency or on his own motion, institute a civil  
17 action for an injunction, prohibitory or mandatory, to restrain  
18 violations of this Act, any rule or regulation adopted under  
19 this Act, any permit or term or condition of a permit, or any  
20 Board order, or to require such other actions as may be  
21 necessary to address violations of 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.

24 (f) The State's Attorney of the county in which the  
25 violation occurred, or the Attorney General, shall bring such  
26 actions in the name of the people of the State of Illinois.

1 Without limiting any other authority which may exist for the  
2 awarding of attorney's fees and costs, the Board or a court of  
3 competent jurisdiction may award costs and reasonable  
4 attorney's fees, including the reasonable costs of expert  
5 witnesses and consultants, to the State's Attorney or the  
6 Attorney General in a case where he has prevailed against a  
7 person who has committed a wilful, knowing or repeated  
8 violation of this Act, any rule or regulation adopted under  
9 this Act, any permit or term or condition of a permit, or any  
10 Board order.

11 Any funds collected under this subsection (f) in which the  
12 Attorney General has prevailed shall be deposited in the  
13 Hazardous Waste Fund created in Section 22.2 of this Act. Any  
14 funds collected under this subsection (f) in which a State's  
15 Attorney has prevailed shall be retained by the county in which  
16 he serves.

17 (g) All final orders imposing civil penalties pursuant to  
18 this Section shall prescribe the time for payment of such  
19 penalties. If any such penalty is not paid within the time  
20 prescribed, interest on such penalty at the rate set forth in  
21 subsection (a) of Section 1003 of the Illinois Income Tax Act,  
22 shall be paid for the period from the date payment is due until  
23 the date payment is received. However, if the time for payment  
24 is stayed during the pendency of an appeal, interest shall not  
25 accrue during such stay.

26 (h) In determining the appropriate civil penalty to be

1 imposed under subdivisions (a), (b) (1), (b) (2), (b) (3), or  
2 (b) (5) of this Section, the Board is authorized to consider any  
3 matters of record in mitigation or aggravation of penalty,  
4 including but not limited to the following factors:

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

6 (2) the presence or absence of due diligence on the  
7 part of the respondent in attempting to comply with  
8 requirements of this Act and regulations thereunder or to  
9 secure relief therefrom as provided by this Act;

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

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

18 (5) the number, proximity in time, and gravity of  
19 previously adjudicated violations of this Act by the  
20 respondent;

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

24 (7) whether the respondent has agreed to undertake a  
25 "supplemental environmental project," which means an  
26 environmentally beneficial project that a respondent



1           agrees to undertake in settlement of an enforcement action  
2           brought under this Act, but which the respondent is not  
3           otherwise legally required to perform.

4           In determining the appropriate civil penalty to be imposed  
5           under subsection (a) or paragraph (1), (2), (3), or (5) of  
6           subsection (b) of this Section, the Board shall ensure, in all  
7           cases, that the penalty is at least as great as the economic  
8           benefits, if any, accrued by the respondent as a result of the  
9           violation, unless the Board finds that imposition of such  
10          penalty would result in an arbitrary or unreasonable financial  
11          hardship. However, such civil penalty may be off-set in whole  
12          or in part pursuant to a supplemental environmental project  
13          agreed to by the complainant and the respondent.

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

19                 (1) that the non-compliance was discovered through an  
20                 environmental audit or a compliance management system  
21                 documented by the regulated entity as reflecting the  
22                 regulated entity's due diligence in preventing, detecting,  
23                 and correcting violations;

24                 (2) that the non-compliance was disclosed in writing  
25                 within 30 days of the date on which the person discovered  
26                 it;

1           (3) that the non-compliance was discovered and  
2 disclosed prior to:

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

5           (ii) notice of a citizen suit;

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

9           (iv) the reporting of the non-compliance by an  
10 employee of the person without that person's  
11 knowledge; or

12           (v) imminent discovery of the non-compliance by  
13 the Agency;

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

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

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

22           (7) that the non-compliance did not result in serious  
23 actual harm or present an imminent and substantial  
24 endangerment to human health or the environment or violate  
25 the specific terms of any judicial or administrative order  
26 or consent agreement;

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

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

7           If a person can establish all of the elements under this  
8           subsection except the element set forth in paragraph (1) of  
9           this subsection, the person is entitled to a 75% reduction in  
10          the portion of the penalty that is not based upon the economic  
11          benefit of non-compliance.

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

17          (k) In addition to remedies afforded the State of Illinois  
18          under this Act, a unit of local government is specifically  
19          authorized to adopt an ordinance imposing a civil penalty  
20          against any person or organization owning or leasing vacant or  
21          abandoned residential property or vacant or abandoned  
22          industrial property from which there is a release of a  
23          hazardous substance, as defined in Section 3.215 of this Act,  
24          or any other contaminant that the unit of local government  
25          finds injures the public health and safety of the community.  
26          The civil penalty may not exceed \$50,000 for the violation and

1 an additional \$10,000 for each day during which the violation  
2 continues. For the purposes of this subsection (k), residential  
3 property is "vacant or abandoned" if, for an uninterrupted  
4 period of more than 2 years, no person uses the property as his  
5 or her principal place of residence, and industrial property is  
6 "vacant or abandoned" if, for an uninterrupted period of more  
7 than 2 years, no commercial or industrial owner has used the  
8 property for a specific commercial enterprise or a specific  
9 industrial enterprise and the principal commercial or  
10 industrial use for which the property was initially used has  
11 ceased or been abandoned.

12 (Source: P.A. 94-272, eff. 7-19-05; 94-580, eff. 8-12-05;  
13 95-331, eff. 8-21-07.)

14 Section 99. Effective date. This Act takes effect upon  
15 becoming law."