



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB1563

Introduced 2/15/2011, by Rep. Marlow H. Colvin

#### SYNOPSIS AS INTRODUCED:

70 ILCS 2605/7a

from Ch. 42, par. 326a

Amends the Metropolitan Water Reclamation District Act. Provides that, after a hearing, the board of commissioners of a sanitary district may order the party responsible for the discharge of sewage, industrial wastes, or other wastes into the district's sewerage system to pay a civil penalty in an amount that is not less than \$1,000 (now, \$100) nor more than \$2,000 per day for each day of discharge in violation of the Act. Effective immediately.

LRB097 05383 RLJ 45440 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning local government.

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

4 Section 5. The Metropolitan Water Reclamation District Act  
5 is amended by changing Section 7a as follows:

6 (70 ILCS 2605/7a) (from Ch. 42, par. 326a)

7 Sec. 7a. Discharge into sewers of a sanitary district.

8 (a) The terms used in this Section are defined as follows:

9 "Board of Commissioners" means the Board of Commissioners  
10 of the sanitary district.

11 "Sewage" means water-carried human wastes or a combination  
12 of water-carried wastes from residences, buildings,  
13 businesses, industrial establishments, institutions, or other  
14 places together with any ground, surface, storm, or other water  
15 that may be present.

16 "Industrial Wastes" means all solids, liquids, or gaseous  
17 wastes resulting from any commercial, industrial,  
18 manufacturing, agricultural, trade, or business operation or  
19 process, or from the development, recovery, or processing of  
20 natural resources.

21 "Other Wastes" means decayed wood, sawdust, shavings,  
22 bark, lime, refuse, ashes, garbage, offal, oil, tar, chemicals,  
23 and all other substances except sewage and industrial wastes.

1 "Person" means any individual, firm, association, joint  
2 venture, sole proprietorship, company, partnership, estate  
3 copartnership, corporation, joint stock company, trust, school  
4 district, unit of local government, or private corporation  
5 organized or existing under the laws of this or any other state  
6 or country.

7 "Executive Director" means the executive director of the  
8 sanitary district.

9 (b) It shall be unlawful for any person to discharge  
10 sewage, industrial waste, or other wastes into the sewerage  
11 system of a sanitary district or into any sewer connected  
12 therewith, except upon the terms and conditions that the  
13 sanitary district might reasonably impose by way of ordinance,  
14 permit, or otherwise.

15 Any sanitary district, in addition to all other powers  
16 vested in it and in the interest of public health and safety,  
17 or as authorized by subsections (b) and (c) of Section 46 of  
18 the Environmental Protection Act, is hereby empowered to pass  
19 all ordinances, rules, or regulations necessary to implement  
20 this Section, including but not limited to, the imposition of  
21 charges based on factors that influence the cost of treatment,  
22 including strength and volume, and including the right of  
23 access during reasonable hours to the premises of a person for  
24 enforcement of adopted ordinances, rules, or regulations.

25 (c) Whenever the sanitary district acting through the  
26 executive director determines that sewage, industrial wastes,

1 or other wastes are being discharged into the sewerage system  
2 and when, in the opinion of the executive director the  
3 discharge is in violation of an ordinance, rules, or  
4 regulations adopted by the Board of Commissioners under this  
5 Section governing industrial wastes or other wastes, the  
6 executive director shall order the offending party to cease and  
7 desist. The order shall be served by certified mail or  
8 personally on the owner, officer, registered agent, or  
9 individual designated by permit.

10 In the event the offending party fails or refuses to  
11 discontinue the discharge within 90 days after notification of  
12 the cease and desist order, the executive director may order  
13 the offending party to show cause before the Board of  
14 Commissioners of the sanitary district why the discharge should  
15 not be discontinued. A notice shall be served on the offending  
16 party directing him, her, or it to show cause before the Board  
17 of Commissioners why an order should not be entered directing  
18 the discontinuance of the discharge. The notice shall specify  
19 the time and place where a hearing will be held and shall be  
20 served personally or by registered or certified mail at least  
21 10 days before the hearing; and in the case of a unit of local  
22 government or a corporation the service shall be upon an  
23 officer or agent thereof. After reviewing the evidence, the  
24 Board of Commissioners may issue an order to the party  
25 responsible for the discharge, directing that within a  
26 specified period of time the discharge be discontinued. The

1 Board of Commissioners may also order the party responsible for  
2 the discharge to pay a civil penalty in an amount specified by  
3 the Board of Commissioners that is not less than \$1,000 ~~\$100~~  
4 nor more than \$2,000 per day for each day of discharge of  
5 effluent in violation of this Act as provided in subsection  
6 (d). The Board of Commissioners may also order the party  
7 responsible for the violation to pay court reporter costs and  
8 hearing officer fees in a total amount not exceeding \$3,000.

9 (d) The Board of Commissioners shall establish procedures  
10 for assessing civil penalties and issuing orders under  
11 subsection (c) as follows:

12 (1) In making its orders and determinations, the Board  
13 of Commissioners shall take into consideration all the  
14 facts and circumstances bearing on the activities involved  
15 and the assessment of civil penalties as shown by the  
16 record produced at the hearing.

17 (2) The Board of Commissioners shall establish a panel  
18 of independent hearing officers to conduct all hearings on  
19 the assessment of civil penalties and issuance of orders  
20 under subsection (c). The hearing officers shall be  
21 attorneys licensed to practice law in this State.

22 (3) The Board of Commissioners shall promulgate  
23 procedural rules governing the proceedings, the assessment  
24 of civil penalties, and the issuance of orders.

25 (4) All hearings shall be on the record, and testimony  
26 taken must be under oath and recorded stenographically.

1 Transcripts so recorded must be made available to any  
2 member of the public or any party to the hearing upon  
3 payment of the usual charges for transcripts. At the  
4 hearing, the hearing officer may issue, in the name of the  
5 Board of Commissioners, notices of hearing requesting the  
6 attendance and testimony of witnesses and the production of  
7 evidence relevant to any matter involved in the hearing and  
8 may examine witnesses.

9 (5) The hearing officer shall conduct a full and  
10 impartial hearing on the record, with an opportunity for  
11 the presentation of evidence and cross-examination of the  
12 witnesses. The hearing officer shall issue findings of  
13 fact, conclusions of law, a recommended civil penalty, and  
14 an order based solely on the record. The hearing officer  
15 may also recommend, as part of the order, that the  
16 discharge of industrial waste be discontinued within a  
17 specified time.

18 (6) The findings of fact, conclusions of law,  
19 recommended civil penalty, and order shall be transmitted  
20 to the Board of Commissioners along with a complete record  
21 of the hearing.

22 (7) The Board of Commissioners shall either approve or  
23 disapprove the findings of fact, conclusions of law,  
24 recommended civil penalty, and order. If the findings of  
25 fact, conclusions of law, recommended civil penalty, or  
26 order are rejected, the Board of Commissioners shall remand

1 the matter to the hearing officer for further proceedings.  
2 If the order is accepted by the Board of Commissioners, it  
3 shall constitute the final order of the Board of  
4 Commissioners.

5 (8) (Blank).

6 (9) The civil penalty specified by the Board of  
7 Commissioners shall be paid within 35 days after the party  
8 on whom it is imposed receives a written copy of the order  
9 of the Board of Commissioners, unless the person or persons  
10 to whom the order is issued seeks judicial review.

11 (10) If the respondent seeks judicial review of the  
12 order assessing civil penalties, the respondent shall,  
13 within 35 days after the date of the final order, pay the  
14 amount of the civil penalties into an escrow account  
15 maintained by the district for that purpose or file a bond  
16 guaranteeing payment of the civil penalties if the civil  
17 penalties are upheld on review.

18 (11) Civil penalties not paid by the times specified  
19 above shall be delinquent and subject to a lien recorded  
20 against the property of the person ordered to pay the  
21 penalty. The foregoing provisions for asserting liens  
22 against real estate by the sanitary district shall be in  
23 addition to and not in derogation of any other remedy or  
24 right of recovery, in law or equity, that the sanitary  
25 district may have with respect to the collection or  
26 recovery of penalties and charges imposed by the sanitary

1 district. Judgment in a civil action brought by the  
2 sanitary district to recover or collect the charges shall  
3 not operate as a release and waiver of the lien upon the  
4 real estate for the amount of the judgment. Only  
5 satisfaction of the judgment or the filing of a release or  
6 satisfaction of lien shall release the lien.

7 (e) The executive director may order a person to cease the  
8 discharge of industrial waste upon a finding by the executive  
9 director that the final order of the Board of Commissioners  
10 entered after a hearing to show cause has been violated. The  
11 executive director shall serve the person with a copy of his or  
12 her order either by certified mail or personally by serving the  
13 owner, officer, registered agent, or individual designated by  
14 permit. The order of the executive director shall also schedule  
15 an expedited hearing before a hearing officer designated by the  
16 Board of Commissioners for the purpose of determining whether  
17 the company has violated the final order of the Board of  
18 Commissioners. The Board of Commissioners shall adopt rules of  
19 procedure governing expedited hearings. In no event shall the  
20 hearing be conducted less than 7 days after receipt by the  
21 person of the executive director's order.

22 At the conclusion of the expedited hearing, the hearing  
23 officer shall prepare a report with his or her findings and  
24 recommendations and transmit it to the Board of Commissioners.  
25 If the Board of Commissioners, after reviewing the findings and  
26 recommendations, and the record produced at the hearings,



1 determines that the person has violated the Board of  
2 Commissioner's final order, the Board of Commissioners may  
3 authorize the plugging of the sewer. The executive director  
4 shall give not less than 10 days written notice of the Board of  
5 Commissioner's order to the owner, officer, registered agent,  
6 or individual designated by permit, as well as the owner of  
7 record of the real estate and other parties known to be  
8 affected, that the sewer will be plugged.

9 The foregoing provision for plugging a sewer shall be in  
10 addition to and not in derogation of any other remedy, in law  
11 or in equity, that the district may have to prevent violation  
12 of its ordinances and orders of its Board of Commissioners.

13 (f) A violation of the final order of the Board of  
14 Commissioners shall be considered a nuisance. If any person  
15 discharges sewage, industrial wastes, or other wastes into any  
16 waters contrary to the final order of the Board of  
17 Commissioners, the sanitary district acting through the  
18 executive director has the power to commence an action or  
19 proceeding in the circuit court in and for the county in which  
20 the sanitary district is located for the purpose of having the  
21 discharge stopped either by mandamus or injunction, or to  
22 remedy the violation in any manner provided for in this  
23 Section.

24 The court shall specify a time, not exceeding 20 days after  
25 the service of the copy of the complaint, in which the party  
26 complained of must plead to the complaint, and in the meantime,

1 the party may be restrained. In case of default or after  
2 pleading, the court shall immediately inquire into the facts  
3 and circumstances of the case and enter an appropriate judgment  
4 in respect to the matters complained of. Appeals may be taken  
5 as in other civil cases.

6 (g) The sanitary district, acting through the executive  
7 director, has the power to commence an action or proceeding for  
8 mandamus or injunction in the circuit court ordering a person  
9 to cease its discharge, when, in the opinion of the executive  
10 director, the person's discharge presents an imminent danger to  
11 the public health, welfare, or safety, presents or may present  
12 an endangerment to the environment, or threatens to interfere  
13 with the operation of the sewerage system or a water  
14 reclamation plant under the jurisdiction of the sanitary  
15 district. The initiation of a show cause hearing is not a  
16 prerequisite to the commencement by the sanitary district of an  
17 action or proceeding for mandamus or injunction in the circuit  
18 court. The court shall specify a time, not exceeding 20 days  
19 after the service of a copy of the petition, in which the party  
20 complained of must answer the petition, and in the meantime,  
21 the party may be restrained. In case of default in answer or  
22 after answer, the court shall immediately inquire into the  
23 facts and circumstances of the case and enter an appropriate  
24 judgment order in respect to the matters complained of. An  
25 appeal may be taken from the final judgment in the same manner  
26 and with the same effect as appeals are taken from judgment of

1 the circuit court in other actions for mandamus or injunction.

2 (h) Whenever the sanitary district commences an action  
3 under subsection (f) of this Section, the court shall assess a  
4 civil penalty of not less than \$1,000 nor more than \$10,000 for  
5 each day the person violates a Board order. Whenever the  
6 sanitary district commences an action under subsection (g) of  
7 this Section, the court shall assess a civil penalty of not  
8 less than \$1,000 nor more than \$10,000 for each day the person  
9 violates the ordinance. Each day's continuance of the violation  
10 is a separate offense. The penalties provided in this Section  
11 plus interest at the rate set forth in the Interest Act on  
12 unpaid penalties, costs, and fees, imposed by the Board of  
13 Commissioners under subsection (d), the reasonable costs to the  
14 sanitary district of removal or other remedial action caused by  
15 discharges in violation of this Act, reasonable attorney's  
16 fees, court costs, and other expenses of litigation together  
17 with costs for inspection, sampling, analysis, and  
18 administration related to the enforcement action against the  
19 offending party are recoverable by the sanitary district in a  
20 civil action.

21 (i) The Board of Commissioners may establish fees for late  
22 filing of reports with the sanitary district required by an  
23 ordinance governing discharges. The sanitary district shall  
24 provide by certified mail a written notice of the fee  
25 assessment that states the person has 30 days after the receipt  
26 of the notice to request a conference with the executive

1 director's designee to discuss or dispute the appropriateness  
2 of the assessed fee. Unless a person objects to paying the fee  
3 for filing a report late by timely requesting in writing a  
4 conference with a designee of the executive director, that  
5 person waives his or her right to a conference and the sanitary  
6 district may impose a lien recorded against the property of the  
7 person for the amount of the unpaid fee.

8 If a person requests a conference and the matter is not  
9 resolved at the conference, the person subject to the fee may  
10 request an administrative hearing before an impartial hearing  
11 officer appointed under subsection (d) to determine the  
12 person's liability for and the amount of the fee.

13 If the hearing officer finds that the late filing fees are  
14 owed to the sanitary district, the sanitary district shall  
15 notify the responsible person or persons of the hearing  
16 officer's decision. If payment is not made within 30 days after  
17 the notice, the sanitary district may impose a lien on the  
18 property of the person or persons.

19 Any liens filed under this subsection shall apply only to  
20 the property to which the late filing fees are related. A claim  
21 for lien shall be filed in the office of the recorder of the  
22 county in which the property is located. The filing of a claim  
23 for lien by the district does not prevent the sanitary district  
24 from pursuing other means for collecting late filing fees. If a  
25 claim for lien is filed, the sanitary district shall notify the  
26 person whose property is subject to the lien, and the person

1 may challenge the lien by filing an action in the circuit  
2 court. The action shall be filed within 90 days after the  
3 person receives the notice of the filing of the claim for lien.  
4 The court shall hear evidence concerning the underlying reasons  
5 for the lien only if an administrative hearing has not been  
6 held under this subsection.

7 (j) If the provisions of any paragraph of this Section are  
8 declared unconstitutional or invalid by the final decision of  
9 any court of competent jurisdiction, the provisions of the  
10 remaining paragraphs continue in effect.

11 (k) Nothing in this Section eliminates any of the powers  
12 now granted to municipalities having a population of 500,000 or  
13 more as to design, preparation of plans, and construction,  
14 maintenance, and operation of sewers and sewerage systems, or  
15 for the control and elimination or prevention of the pollution  
16 of their waters or waterways, in the Illinois Municipal Code or  
17 any other Act of the State of Illinois.

18 (l) The provisions of the Administrative Review Law and all  
19 amendments and rules adopted pursuant to that Law apply to and  
20 govern all proceedings for the judicial review of final  
21 administrative decisions of the Board of Commissioners in the  
22 enforcement of any ordinance, rule, or regulation adopted under  
23 this Act.

24 (Source: P.A. 95-923, eff. 1-1-09; 96-328, eff. 8-11-09.)

25 Section 99. Effective date. This Act takes effect upon  
26 becoming law.