



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB1458

Introduced 2/6/2013, by Sen. Michael Noland

SYNOPSIS AS INTRODUCED:

220 ILCS 20/2.08 new
220 ILCS 20/2.09 new
220 ILCS 20/2.10 new
220 ILCS 20/2.11 new
220 ILCS 20/7
220 ILCS 20/7.5 new

from Ch. 111 2/3, par. 557

Amends the Illinois Gas Pipeline Safety Act. Provides that, after investigation and determination of a failure to comply with a provision of the Act or any Commission order or rule issued under the Act, the Pipeline Safety Program manager may issue and deposit in the United States mail a notice of probable violation (NOPV). Sets forth guidelines for the contents of the NOPV. Provides that, if one or more of the proposed penalties set forth in an NOPV is not timely paid or if one or more of the proposed corrective actions set forth in an NOPV is not fully and timely completed, all in accordance with the terms and conditions set forth in the NOPV, an evaluator may be assigned to conduct an expedited evaluation of the NOPV. Sets forth the procedures for the expedited evaluation. Makes corresponding changes in provisions concerning penalties. Effective immediately.

LRB098 02584 AMC 32589 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning utilities.

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

4 Section 5. The Illinois Gas Pipeline Safety Act is amended
5 by adding Sections 2.08, 2.09, 2.10, 2.11, and 7.5 and by
6 changing Section 7 as follows:

7 (220 ILCS 20/2.08 new)

8 Sec. 2.08. Notice of probable violation. "Notice of
9 probable violation" or "NOPV" means a written notice,
10 satisfying the criteria set forth in Section 7.5 of this Act,
11 given by the PSP manager to a person who engages in the
12 transportation of gas or who owns or operates pipeline
13 facilities that identifies a failure of such person to comply
14 with the provisions of this Act or any Commission order or rule
15 issued under this Act.

16 (220 ILCS 20/2.09 new)

17 Sec. 2.09. PSP manager. "PSP manager" means the manager of
18 the Commission's Pipeline Safety Program or other staff of the
19 Commission assigned to gas pipeline safety issues.

20 (220 ILCS 20/2.10 new)

21 Sec. 2.10. Evaluator. "Evaluator" means a hearing examiner

1 as described in Section 2-106 of the Public Utilities Act.

2 (220 ILCS 20/2.11 new)

3 Sec. 2.11. Expedited evaluation. "Expedited evaluation"
4 means a proceeding that satisfies the criteria set forth in
5 Section 7.5 of this Act before an evaluator with the goal of
6 providing the opportunity for expedited evaluation,
7 recommendation, and resolution of an NOPV.

8 (220 ILCS 20/7) (from Ch. 111 2/3, par. 557)

9 Sec. 7. Penalties; action for penalties.

10 (a) Any person violating paragraph (a) of Section 6 of this
11 Act or any rule or order issued under this Act is subject to a
12 civil penalty not to exceed the maximum penalties established
13 by Section 60122(a)(1) of Title 49 of the United States Code
14 for each day the violation persists. Such civil penalties do
15 not apply to a violation with respect to a pipeline facility in
16 existence on the effective date of this Act unless such
17 violation persists one year from the effective date.

18 (b) Any civil penalty may be compromised by the Commission
19 or, prior to the initiation of an expedited evaluation, by the
20 PSP manager or, in the context of an expedited evaluation, by
21 the evaluator. In determining the amount of the penalty, or the
22 amount agreed upon in compromise, the Commission, the PSP
23 manager, or evaluator, as the case may be, shall consider the
24 appropriateness of the penalty to the size of the business of

1 the person charged, the gravity of the violation, and the good
2 faith of the person charged in attempting to achieve
3 compliance, after notification of a violation. The amount of
4 the penalty when finally determined, or the amount agreed upon
5 in compromise, may be deducted from any sums owing by the State
6 of Illinois to the person charged or may be recovered in a
7 civil action in accordance with paragraph (c) of this Section
8 7.

9 (c) Actions to recover penalties under this Act shall be
10 brought in the name of the People of the State of Illinois in
11 the circuit court in and for the county in which the cause or
12 some part thereof, arose or in which the corporation complained
13 of, if any, has its principal place of business or in which the
14 person, if any, complained of, resides. All penalties recovered
15 by the State in any action shall be paid into the general fund
16 of the State Treasury. The action shall be commenced and
17 prosecuted to final judgment by the Attorney General on behalf
18 of the Commission. In all such actions, the procedure and rules
19 of evidence shall conform with the Civil Practice Law and other
20 rules of court governing civil trials.

21 (d) In addition the Commission may proceed under Section
22 4-202 of the Public Utilities Act, either by mandamus or
23 injunction, to secure compliance with its rules, regulations
24 and orders issued under this Act.

25 (e) Any person penalized under this Section is not subject,
26 for the same cause, to any other penalty provided in the Public

1 Utilities Act.

2 (Source: P.A. 91-814, eff. 6-13-00.)

3 (220 ILCS 20/7.5 new)

4 Sec. 7.5. NOPV; expedited evaluation.

5 (a) For the purposes of this Section "violation" means a
6 failure to comply with any provision of this Act or any
7 Commission order or rule issued under this Act.

8 (b) After investigation and determination of a violation,
9 the PSP Manager may issue and deposit in the United States mail
10 an NOPV. Any NOPV so issued and mailed may also be posted on
11 the Commission's website as a public document, subject to the
12 requirements of Section 4-404 of the Public Utilities Act.

13 (c) An NOPV shall set forth, at a minimum, the following:
14 (1) the date the NOPV was issued and deposited in the United
15 States mail; (2) a description of the violation or violations
16 alleged; (3) the date and location of the safety incident, if
17 applicable, related to each alleged violation; (4) a detailed
18 description of the circumstances that support the
19 determination of each proposed violation; (5) a detailed
20 description of the corrective action required with respect to
21 each proposed violation; (6) the amount of the penalty proposed
22 with respect to each proposed violation; (7) the applicable
23 deadline for payment of each proposed penalty and for
24 completion of each proposed corrective action (in no event
25 shall any proposed deadline be less than 30 days after the date

1 of the NOPV); (8) the consequences for failure to pay a
2 proposed penalty or to complete any proposed corrective action
3 on or before its respective proposed deadlines; and (9) a brief
4 description of the procedures by which any proposed penalty or
5 proposed corrective action may be challenged at the Commission.

6 (d) Payment in full of each of the proposed penalties and
7 full completion of each of the proposed corrective actions, as
8 identified in the NOPV and in accordance with the terms and
9 conditions set forth in the NOPV, including without limitation
10 the respective deadlines set forth in the NOPV for such payment
11 or completion, shall constitute a final resolution of the NOPV.
12 If one or more of the proposed penalties set forth in an NOPV
13 is not timely paid or if one or more of the proposed corrective
14 actions set forth in an NOPV is not fully and timely completed,
15 all in accordance with the terms and conditions set forth in
16 the NOPV, an evaluator may be assigned to conduct an expedited
17 evaluation of the NOPV. If, under such circumstances, an
18 evaluator is not assigned to conduct an expedited evaluation
19 within one year after the date of issuance of the NOPV, the
20 NOPV and related investigation shall be deemed closed.

21 (e) Under an expedited evaluation, the evaluator shall, by
22 written notice, provide an opportunity for the person subject
23 to the NOPV to attend a presentation by the PSP manager of its
24 investigation and recommendations regarding the NOPV and to
25 submit, for consideration by the evaluator, any information,
26 including testimony relevant to any disputed proposed

1 penalties, proposed corrective action, or other alleged
2 failures set forth in the NOPV, or related thereto. The
3 evaluator shall consider such recommendations and information
4 provided, if any, and make its determination on the basis
5 thereof, using the criteria identified in subsection (b) of
6 Section 7 to the extent applicable. The evaluator shall
7 consider all information offered by the parties which the
8 evaluator deems necessary or relevant to understand the
9 circumstances related to the NOPV, assess the disputed issues,
10 and render its determination. The evaluator shall inform the
11 parties of its determination prior to the conclusion of the
12 expedited evaluation, including any recommended penalty or
13 corrective action that the evaluator deems appropriate. The
14 evaluator shall also issue its determination in writing
15 regarding the NOPV within 14 days after the conclusion of the
16 expedited evaluation.

17 (f) An expedited evaluation shall be conducted as an
18 informal proceeding and, as such, shall not be subject to the
19 Illinois Administrative Procedure Act or the Commission's
20 rules of procedure and evidence. The person subject to the
21 NOPV, and any individual speaking on such person's behalf, may
22 participate in the expedited evaluation with or without legal
23 counsel.

24 (g) If the evaluator determines that any penalty or
25 corrective action with respect to the NOPV is warranted,
26 payment in full and full completion of such corrective action

1 in accordance with the terms and conditions set forth in the
2 evaluator's determination shall constitute a final resolution
3 of the NOPV.

4 (h) If, after the evaluator has considered a particular
5 contested penalty or corrective action identified in an NOPV
6 and made its determination in an expedited evaluation, there
7 remains a dispute as to whether the Commission shall impose a
8 penalty or require corrective action under this Act, the matter
9 shall proceed in the manner set forth in Article X of the
10 Public Utilities Act, including the provisions governing
11 judicial review.

12 (i) Submission of a dispute to an expedited evaluation
13 shall not result in waiver of the right of any party to bring a
14 de novo action before the Commission thereafter, under this
15 Act. No information provided or statements made by a person in
16 an expedited evaluation is admissible in a matter subsequently
17 brought before the Commission regarding the NOPV at issue;
18 provided, however, that if the information provided or
19 statements made are otherwise discoverable, such discoverable
20 information or statements will not be excluded or deemed
21 inadmissible merely because the same were presented in the
22 course of an expedited evaluation.

23 (j) Once an expedited evaluation is initiated, no contested
24 matter may be filed with the Commission regarding the NOPV at
25 issue, until the expedited evaluation is concluded.

26 (k) The Commission shall have the power to adopt rules to

1 implement this Section, to the extent the Commission deems such
2 rules necessary or desirable.

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.