

SB1781



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1781

Introduced 2/9/2011, by Sen. Martin A. Sandoval

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 05384 RLJ 45441 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.