

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.