

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5090

FISCAL
NOTE

By Delegate Hansen

[Introduced January 25, 2024; Referred to the
Committee on the Judiciary then Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §22-11-22b, relating to allowing increased civil administrative penalties to be
 3 promulgated by legislative rules by the Department of Environmental Protection, for
 4 individual or general construction stormwater, West Virginia Department of Environmental
 5 Protection National Pollutant Discharge Elimination System permits, and General Water
 6 Pollution Control Permits for larger acreage permits; providing for doubling penalties for
 7 projects of certain sizes; providing for projects at least 500 acres have larger penalties
 8 assessed for violations; providing for rulemaking; providing for additional penalties based
 9 on the number of violations; and providing for resolution of code conflict in favor of
 10 legislative rules promulgated according to this section.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-22b. Directing civil administrative penalties to be promulgated by legislative rules to deter repeat violations for very large projects.

1 (a) For the purposes of this section, "accumulative impact" means violations during a
 2 permitted activity that have the potential for repetition or may occur on a significantly larger scale
 3 than other violations, and where more sophisticated engineering and planning activities
 4 associated with the design or conduct of the project makes such violations more egregious.
 5 Further, the potential for accumulative impacts for such larger permitted activities and economic
 6 factors of large project investment and costs mean smaller penalties will not effectively deter future
 7 violations, and therefore require a larger range of penalties options for the agency. The increased
 8 penalty range established in subsections (b) and (c) of this section are applicable to projects
 9 permitted under an individual or general construction stormwater West Virginia National Pollutant
 10 Discharge Elimination System permit, or General Water Pollution Control Permit, including, but not
 11 limited to, permit number WV0115924, Stormwater Associated with Construction Activities, and
 12 permit number WV0116815, Stormwater Associated with Oil and Gas Related Construction

13 Activities.

14 (b) Effective January 1, 2025, the secretary shall adopt, modify, repeal, and enforce
15 legislative rules, in accordance with the provisions of §29A-3-1 et seq. of this code, establishing
16 civil administrative penalties for the violations of this article which enforce the permits listed in
17 subsection (a) of this section to deter repeat violations and accumulative impacts of large and
18 more sophisticated projects that have the potential for accumulative impacts.

19 (c) Deterrence of repeat violations for projects with the potential for accumulative impacts
20 shall be accomplished as follows:

21 (1) For activities that impact no fewer than 100 acres but less than 500 acres, because of
22 scale of the activity and potential for accumulative impact, the civil penalty matrix in the legislative
23 rule shall assess penalties at two times those for smaller projects.

24 (2) For projects of 500 acres or greater, as the potential for accumulative impact is greater,
25 the civil penalty matrix in the legislative rule shall assess penalties at five times to 10 times the civil
26 penalty matrix as those for smaller projects.

27 (3) For projects with the potential for accumulative impacts for which no fewer than 10 and
28 no more than 100 violations are included in a single action, the civil penalty matrix in the legislative
29 rule shall assess penalties with an additional factor of two. This factor is in addition to the
30 additional penalties assessed in this subsection.

31 (4) For all projects with the potential for accumulative impacts for which no fewer than 100
32 violations are included in a single action, the civil penalty matrix in the legislative rule shall assess
33 penalties with an additional factor of five. This factor is in addition to the additional penalties
34 assessed in this subsection.

35 (d) Upon promulgation of any legislative rules authorized pursuant to this section, any civil
36 administrative penalties contained in §22-11-22 or §22-11-22a of this code in conflict are deemed
37 superseded by legislative rules promulgated pursuant to this section.

NOTE: The purpose of this bill is to increase the amounts that can be assessed of civil administrative penalties of the Department of Environmental Protection on individual or general construction stormwater West Virginia/National Pollutant Discharge Elimination System permits and General Water Pollution Control Permits for larger acreage permits.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.