

1 SB181  
2 126883-2  
3 By Senator Marsh  
4 RFD: Judiciary  
5 First Read: 08-MAR-11

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8 SYNOPSIS: Currently, the Alabama Department of  
9 Environmental Management administers, regulates,  
10 and enforces environmental laws of the state,  
11 including the issuance of a range of civil  
12 penalties for certain violations.

13 This bill would delete the minimum penalty  
14 amounts issued by the department.

15  
16 A BILL  
17 TO BE ENTITLED  
18 AN ACT

19  
20 To amend Section 22-22A-5, Code of Alabama 1975,  
21 relating to civil penalties assessed by law for violations of  
22 state environmental protection laws and orders; to delete the  
23 minimum penalty amounts.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. Section 22-22A-5, Code of Alabama 1975,  
26 is amended to read as follows:

27 "§22-22A-5.

1            "In addition to any other powers and functions which  
2 may be conferred upon it by law, the department is authorized  
3 beginning October 1, 1982 to:

4            "(1) Administer appropriate portions of Sections  
5 9-7-10 through 9-7-20, which relate to permitting, regulatory  
6 and enforcement functions; administer and enforce the  
7 provisions and execute the functions of Chapter 28 of this  
8 title; Chapter 22 of this title; Article 2 of Chapter 23 of  
9 this title; Chapter 30 of this title; appropriate portions of  
10 Article 1 of Chapter 27 of this title; Sections 22-24-1  
11 through 22-24-11; Sections 22-25-1 through 22-25-15; and  
12 Sections 22-36-1 through 22-36-10.

13            "(2) Acting through the Environmental Management  
14 Commission, promulgate rules, regulations and standards in  
15 order to carry out the provisions and intent of this chapter;  
16 provided, however, that prior to the promulgation of any state  
17 primary or secondary drinking water standard governed by  
18 Sections 22-23-30 through 22-23-53 or any regulations dealing  
19 with hazardous wastes governed by Sections 22-30-1 through  
20 22-30-24, the department shall receive the approval of the  
21 State Board of Health. The State Board of Health shall provide  
22 the department a response to its request for approval within  
23 60 days of receipt of such request unless such other time is  
24 mutually agreed upon by the department and the State Board of  
25 Health.

26            "(3) Acting through the Environmental Management  
27 Commission, adopt and promulgate rules, regulations and

1 standards for the department, and to develop environmental  
2 policy for the state.

3 "(4) Consistent with the provisions in subsection  
4 22-22A-4(n), serve as the State Agency responsible for  
5 administering federally approved or federally delegated  
6 environmental programs.

7 "(5) Serve as the state's clearinghouse for  
8 environmental data. The clearinghouse shall be developed in  
9 coordination and cooperation with other governmental data  
10 collection and record keeping systems to provide for an  
11 inventory, and for the cataloguing and dissemination of  
12 environmental information.

13 "(6) Report, as appropriate, to the Governor and to  
14 the Legislature on the programs and activities of the  
15 department and to recommend needed changes in legislation or  
16 administrative practice.

17 "(7) Develop, conduct and disseminate education and  
18 training programs. Pursuant to this authority, the department  
19 shall establish a citizens' advisory committee to provide  
20 input into such education and training programs.

21 "(8) Enter into agreements and contracts, where  
22 appropriate, with other state agencies, the federal government  
23 or private individuals, in order to accomplish the purposes of  
24 this chapter.

25 "(9) Establish and maintain regional or field  
26 offices in order to provide more effective and efficient  
27 services to the citizens of the state.

1           "(10) Issue, modify, suspend or revoke orders,  
2 citations, notices of violation, licenses, certifications or  
3 permits.

4           "(11) Hold hearings relating to any provision of  
5 this chapter or relating to the administration thereof.

6           "(12) Enforce all provisions of this chapter and all  
7 provisions of law identified in subdivision (1) of this  
8 section and to file legal actions in the name of the  
9 department and to prosecute, defend or settle actions brought  
10 by or against the department or its agents. The Attorney  
11 General shall represent the department in any and all legal  
12 actions brought by the department to enforce any provisions of  
13 this chapter; provided however, that if, within a reasonable  
14 time after the department refers the matter to him, he fails  
15 to file any such action, then the department may commence  
16 appropriate legal action. Nothing in this subdivision shall be  
17 construed so as to impair the authority of the Attorney  
18 General to independently enforce the provisions of this  
19 chapter.

20           "(13) When necessary to achieve conformance with  
21 Sections 9-7-10 through 9-7-20, acquire fee simple or less  
22 than fee simple, interest in land, water and other property  
23 under the procedures of Title 18 or other means; provided,  
24 however, that such power shall not apply to property and  
25 interest therein which is devoted to public use.

26           "(14) Apply for, where appropriate, accept, receive  
27 and administer grants or other funds or gifts from public and

1 private agencies, including the federal government, for the  
2 purpose of carrying out any of the functions, purposes or  
3 provisions of this chapter or any of the functions or  
4 provisions transferred to the department by this chapter.

5 "(15) Employ such professional, technical, clerical  
6 and other workers including attorneys and special counsel, and  
7 such consultants as are necessary and within available funds  
8 to carry out the purposes of this chapter.

9 "(16) Adopt rules and regulations relating to  
10 charging and collecting fees sufficient to cover the  
11 reasonable anticipated costs to be incurred by the department  
12 and directly related to the issuance, reissuance, modification  
13 or denial of any permit, license, certification or variance,  
14 such fees to include, but not be limited to, the reasonable  
15 anticipated cost of the examination and processing of  
16 applications, plans, specifications or any other data and any  
17 necessary public hearings and investigations; provided,  
18 however, that nothing in this subdivision shall be construed  
19 as modifying or affecting the provisions of Section 22-24-5. A  
20 schedule of estimated reasonable anticipated costs shall be  
21 appended to rules and regulations with the understanding that  
22 fees may be higher or lower on a case-by-case basis.

23 "(17) In addition to any other remedies provided by  
24 law, recover in a civil action from any person who has  
25 violated, or threatens to violate, any provision of this  
26 chapter, or any provision of law identified in subdivision (1)  
27 of this section, or any rule or regulation promulgated

1 thereunder, or any order, or condition of any permit, license,  
2 certification or variance issued by the department pursuant  
3 thereto, the actual costs reasonably incurred by the  
4 department to prevent, minimize or abate any adverse effect on  
5 air, land or water resources which results or may result from  
6 such violation. Such civil actions may be filed in the circuit  
7 court of the county in which the defendant resides or does  
8 business, or in which the violation or threatened violation  
9 occurs or in which the adverse effect occurs.

10 "(18)a. Issue an order assessing a civil penalty to  
11 any person who violates any provision of law identified in  
12 subdivision (1) of this section, any rule, regulation or  
13 standard promulgated by the department, any provision of any  
14 order, or any condition of any permit, license, certification  
15 or variance issued by the department, provided however, that  
16 no such order shall be issued to a person:

17 "1. If a civil action to recover a penalty for such  
18 violation has been commenced against such person as provided  
19 in paragraph b. of this subdivision.

20 "2. For any violation at a coal mining operation  
21 regulated under Sections 9-16-70 through 9-16-107 or Title V  
22 of Public Law 95-87, 30 U.S.C. § 1251-1279.

23 "3. If an order assessing a civil penalty for such  
24 violation has been issued to such person pursuant to  
25 subdivision (2) of subsection 22-28-23(b).

1           "4. Who is a responsible corporate officer subject  
2 to a civil action for the recovery of a penalty under  
3 paragraph b. of this subdivision.

4           "The department shall commence enforcement action  
5 under this paragraph by notifying the person subject thereto  
6 in writing of the alleged violation and affording the person  
7 an opportunity for an informal conference with the director or  
8 his or her designated representative concerning the alleged  
9 violation and any proposed order. The informal conference  
10 shall not be subject to the procedures for hearings under  
11 Section 22-22A-7. Before issuing any consent or unilateral  
12 order under this section, the department shall cause public  
13 notice to be published for one day in a newspaper of general  
14 circulation in the area where the alleged violation occurred  
15 and on the website of the department for the duration of the  
16 comment period; provided, however, that unavailability of the  
17 website during the comment period shall not affect the  
18 validity of an order issued under this paragraph. The notice  
19 shall reasonably describe the nature and location of the  
20 alleged violation and the amount of civil penalty proposed,  
21 contain a summary of any proposed corrective measures, provide  
22 instructions for obtaining a copy of the proposed order, and  
23 indicate that persons may submit written comments to the  
24 department and request a hearing on the proposed order within  
25 30 days of the first date of publication. The department may  
26 hold a hearing if the information submitted in support of the  
27 request is material and if a hearing may clarify one or more



1 issues raised in the written comments. If the department  
2 grants a request for a hearing, the department shall provide  
3 written notice of the time, date, and location of the hearing  
4 by regular mail at least 20 days prior to the hearing to all  
5 persons subject to the proposed order and all persons who  
6 submitted written comments on the proposed order that contain  
7 a current return address. At any such hearing, the department  
8 shall provide a reasonable opportunity for persons subject to  
9 the proposed order and persons who submitted written comments  
10 on the proposed order to be heard and to submit information to  
11 the director or his or her designated representative,  
12 provided, however, that the hearing shall not be subject to  
13 the procedures for hearings under Section 22-22A-7, or  
14 practices or procedures governing public hearings. The  
15 department shall also accept additional written comments from  
16 any interested party that are received on or before the date  
17 of the hearing. After consideration of written comments, any  
18 information submitted at the hearing, if one was held, and any  
19 other publicly available information, the department may issue  
20 the order as proposed, issue a modified order, or withdraw the  
21 proposed order. Any order issued under this paragraph shall  
22 include findings of fact relied upon by the department in  
23 determining the alleged violation and the amount of the civil  
24 penalty and shall be served on persons subject to the order in  
25 the manner provided for service of process in the Alabama  
26 Rules of Civil Procedure. Upon issuance of an order, the  
27 department shall also provide written notice of the order by

1 regular mail to each person who submitted written comments on  
2 the proposed order that contain a current return address. The  
3 notice shall reasonably describe the nature and location of  
4 the alleged violation and the amount of civil penalty, contain  
5 a summary of any required corrective measures, provide  
6 instructions for obtaining a copy of the order, and indicate  
7 that persons who submitted written comments on the proposed  
8 order may, within 30 days of the issuance of the order,  
9 request a hearing on the order before the Environmental  
10 Management Commission in accordance with Section 22-22A-7.  
11 Where the department has issued an order finding that a  
12 violation has occurred and assessing a civil penalty, the  
13 person subject thereto shall, unless the department and that  
14 person agree on a different schedule, pay the penalty in full  
15 within 45 days after issuance of such order unless any person  
16 has filed a timely request for a hearing to contest the  
17 issuance of such order in accordance with Section 22-22A-7, in  
18 which case the penalty assessed in the order as approved or  
19 modified by the Environmental Management Commission shall,  
20 unless the department and that person agree on a different  
21 schedule, be paid in full within 30 days after the order is  
22 approved or modified by the Environmental Management  
23 Commission or, if an appeal thereof is taken to circuit court,  
24 within 42 days after the court affirms the order as approved  
25 or modified by the Environmental Management Commission. Civil  
26 penalties assessed in an order under this paragraph and not  
27 paid as provided herein may be recovered in a civil action

1 brought by the department in the Circuit Court of Montgomery  
2 County or the county in which the defendant does business.

3 "b. Commence a civil action in the circuit court of  
4 the county in which the defendant or any material defendant  
5 resides or does business or in which the violation occurred to  
6 recover a civil penalty from such person for any violation of  
7 any provision of law identified in subdivision (1) of this  
8 section, any rule, regulation or standard promulgated by the  
9 department, any provision of any order or any condition of any  
10 permit, license, certification or variance issued by the  
11 department, provided however, that no such civil action may be  
12 commenced against a person if an order assessing a civil  
13 penalty for such violation has been issued to such person  
14 under paragraph a. of this subdivision. Whenever such person  
15 is a corporation and the violation is of a provision of law in  
16 Chapter 22 of this title, or any rule, regulation or standard  
17 promulgated by the department thereunder, or any provision of  
18 any order or any condition of any permit, license,  
19 certification or variance issued by the department thereunder,  
20 the same civil penalties that may be imposed upon a person  
21 under this subdivision may be imposed upon the responsible  
22 corporate officers in a civil action. Any person having an  
23 interest which is or may be adversely affected may intervene  
24 as a matter of right in any civil action commenced under this  
25 paragraph. The Attorney General may also commence a civil  
26 action under this paragraph.

1            "c. Any civil penalty assessed or recovered under  
2 paragraph a. or b. of this subdivision shall not ~~be less than~~  
3 ~~\$100.00~~ or exceed \$25,000.00 for each violation, provided  
4 however, that the total penalty assessed in an order issued by  
5 the department under paragraph a. of this subdivision shall  
6 not exceed \$250,000.00. Each day such violation continues  
7 shall constitute a separate violation for purposes of this  
8 subdivision. In determining the amount of any penalty,  
9 consideration shall be given to the seriousness of the  
10 violation, including any irreparable harm to the environment  
11 and any threat to the health or safety of the public; the  
12 standard of care manifested by such person; the economic  
13 benefit which delayed compliance may confer upon such person;  
14 the nature, extent and degree of success of such person's  
15 efforts to minimize or mitigate the effects of such violation  
16 upon the environment; such person's history of previous  
17 violations; and the ability of such person to pay such  
18 penalty. Civil penalties may be assessed under this  
19 subdivision for any violation occurring within two years prior  
20 to the date of issuance of an order under paragraph a. of this  
21 subdivision or commencement of such civil action under  
22 paragraph b. of this subdivision. All civil penalties  
23 recovered under this subdivision by the department or Attorney  
24 General shall be deposited into the State Treasury to the  
25 credit of the General Fund, except that portion which  
26 represents the reasonable costs incurred by the department or  
27 Attorney General to recover such penalties which shall be

1 deposited to the credit of the operating fund of the  
2 department or Attorney General, whichever incurred such costs.

3 "(19) Commence a civil action in the circuit court  
4 of the county in which the defendant or any material defendant  
5 resides or does business or in which the threatened or  
6 continuing violation of any provision of law identified in  
7 subdivision (1) of this section, any rule, regulation or  
8 standard promulgated by the department, any provision of any  
9 order, or any condition of any permit, license, certification  
10 or variance issued by the department. The Attorney General or  
11 district attorney having jurisdiction in the circuit, county  
12 or territory in which the threatened or continuing violation  
13 occurs may also commence a civil action to enjoin such  
14 violation. In any such action, any person having an interest  
15 which is or may be adversely affected may intervene as a  
16 matter of right.

17 "(20) Perform any other duty or take any other  
18 action necessary for the implementation and enforcement of  
19 this chapter."

20 Section 2. This act shall become effective  
21 immediately following its passage and approval by the  
22 Governor, or its otherwise becoming law.