

# S.8308-B (Budget), Part AAA (see also S.7086 – Harckham)

STAFF CONTACT : Ken Pokalsky | Vice President | 518.694.4460

<p><b>BILL</b></p> <p>S.8308-B (Budget), Part AAA (see also S.7086 – Harckham)</p>
<p><b>SUBJECT</b></p> <p>ECL Civil Penalty Income to Pay for Enforcement</p>
<p><b>DATE</b></p> <p>March 18, 2024</p>
<p><b>OPPOSE</b></p>

The Business Council has a longstanding opposition to tying civil and criminal fines to any specific budget item or appropriation, as such arrangements can unduly influence the assessment of civil penalties. Penalties should be based on the nature of the violation being addressed, not the need to fund a budget appropriation. Likewise, adequate funding for state oversight and enforcement efforts should not be dependent on penalty assessments.

This component of the Senate’s one-house budget bill and resolution (reflecting language set forth in S.7086) would increase most maximum civil and criminal penalties in the Environmental Conservation Law (ECL) and direct all penalty payments to a newly created “environmental enforcement account,” with the intent to (as stated in the Senate Resolution) increase revenue for the enforcement of environmental laws. (The sponsor’s memo for S.7086 states that “This legislation will provide that fees paid for certain environmental violations are deposited into New York’s conservation enforcement account, ensuring that those violating our laws are taking on the costs of enforcing them.”

Using civil and criminal penalty assessments to fund enforcement actions is contrary to long-standing statutory provisions and DEC policy and practice. Ironically, this bill **reverses** earlier legislation (Chapter 60, Laws of 1993, section 22) which redirected ECL penalty proceeds from the environmental enforcement account (renamed the environmental regulatory account) to the general fund.

Most ECL enforcement provisions allow a broad range of civil and criminal penalties. For example, §71-2103 regarding enforcement of air emission permits, authorizes civil penalties for initial violations anywhere from \$500 to \$18,000. But the ECL also includes criteria for setting civil penalties. Section §71-2115, establishing penalty assessment criteria for air program violations, requires civil penalties to be based on “the economic impact of a penalty on a

business, the compliance history of a violator, good faith efforts of a violator to comply, any economic benefit obtained from noncompliance [and] the amount of risk or damage to public health or the environment caused by a violator.”

Similar provisions apply to violations of other ECL provisions.

Likewise, the DEC’s long-standing civil penalty policy directs that penalties should reflect a “benefit component” designed to “remove any economic benefit that results from a failure to comply with the law,” as well as a “gravity component,” reflecting the seriousness of the violation.

We believe these existing statutory provisions and DEC’s civil penalty policy set forth an effective, reasonable and consistent approach to setting financial penalties for civil and criminal violations of the Environmental Conservation Law. We believe it is fundamentally bad public policy to (directly or indirectly) make program funding requirements a component of penalty assessments. For these reasons, The Business Council opposes adoption of Part AAA of S.8308-B.