

2 **SHB 1356** - S COMM AMD  
3 By Committee on Ecology & Parks

4 ADOPTED 4/1/93

5 Strike everything after the enacting clause and insert the  
6 following:

7 "**Sec. 1.** RCW 70.119A.030 and 1991 c 304 s 3 are each amended to  
8 read as follows:

9 (1) The secretary or his or her designee or the local health  
10 officer may declare a public health emergency. As limited by RCW  
11 70.119A.040, the department may impose penalties for violations of laws  
12 or regulations that are determined to be a public health emergency.

13 (2) As limited by RCW 70.119A.040, the department may impose  
14 penalties for (~~failure to comply with an order of the department, or~~  
15 ~~of an authorized local board of health, when the order:~~

16 ~~(a) Directs any person to stop work on the construction or~~  
17 ~~alteration of a public water system when plans and specifications for~~  
18 ~~the construction or alteration have not been approved as required by~~  
19 ~~the regulations, or when the work is not being done in conformity with~~  
20 ~~approved plans and specifications;~~

21 ~~(b) Requires any person to eliminate a cross-connection to a public~~  
22 ~~water system by a specified time; or~~

23 ~~(c) Requires any person to cease violating any regulation relating~~  
24 ~~to public water systems, to take specific actions within a specified~~  
25 ~~time to place a public water system in compliance with regulations~~  
26 ~~adopted under chapters 43.20 and 70.119 RCW, to apply for an operating~~  
27 ~~permit as required under RCW 70.119A.110 or to comply with any~~  
28 ~~conditions or requirements imposed as part of an operating permit))~~  
29 violation of laws or rules regulating public water systems and  
30 administered by the department of health.

31 **Sec. 2.** RCW 70.119A.040 and 1990 c 133 s 8 are each amended to  
32 read as follows:

33 (1)(a) In addition to or as an alternative to any other penalty  
34 (~~provided~~) or action allowed by law, (~~every~~) a person who (~~commits~~  
35 ~~any of the acts or omissions in RCW 70.119A.030 shall be subjected~~)

1 violates a law or rule regulating public water systems and administered  
2 by the department of health is subject to a penalty ((in an amount of  
3 not less than five hundred dollars. The maximum penalty shall be)) of  
4 not more than five thousand dollars per day for every such violation,  
5 or, in the case of a violation that has been determined to be a public  
6 health emergency, a penalty of not more than ten thousand dollars per  
7 day for every such violation. Every such violation shall be a separate  
8 and distinct offense. The amount of fine shall reflect the health  
9 significance of the violation and the previous record of compliance on  
10 the part of the public water supplier. In case of continuing  
11 violation, every day's continuance shall be a separate and distinct  
12 violation.

13 (b) In addition, a person who constructs, modifies, or expands a  
14 public water system or who commences the construction, modification, or  
15 expansion of a public water system without first obtaining the required  
16 departmental approval is subject to penalties of not more than five  
17 thousand dollars per service connection, or, in the case of a system  
18 serving a transient population, a penalty of not more than four hundred  
19 dollars per person based on the highest average daily population the  
20 system is anticipated to serve. The total penalty that may be imposed  
21 pursuant to this subsection (1)(b) is five hundred thousand dollars.

22 (c) Every person who, through an act of commission or omission,  
23 procures, aids, or abets ((in the)) a violation ((shall be)) is  
24 considered to have violated the provisions of this section and ((shall  
25 be)) is subject to the penalty provided in this section.

26 (2) The penalty provided for in this section shall be imposed by a  
27 notice in writing to the person against whom the civil ((fine)) penalty  
28 is assessed and shall describe the violation. The notice shall be  
29 personally served in the manner of service of a summons in a civil  
30 action or in a manner that shows proof of receipt. A penalty imposed  
31 by this section is due twenty-eight days after receipt of notice unless  
32 application for ((remission or mitigation is made as provided in  
33 subsection (3) of this section or unless application for)) an  
34 adjudicative proceeding is filed as provided in subsection ((4)) (3)  
35 of this section.

36 (3) ((Within fourteen days after the notice is received, the person  
37 incurring the penalty may apply in writing to the department for the  
38 remission or mitigation of such penalty. Upon receipt of the  
39 application, the department may remit or mitigate the penalty upon

1 whatever terms the department in its discretion deems proper, giving  
2 consideration to the degree of hazard associated with the violation,  
3 provided the department deems such remission or mitigation to be in the  
4 best interests of carrying out the purposes of this chapter. The  
5 department shall not mitigate the fines below the minimum penalty  
6 prescribed in subsection (1) of this section. The department shall  
7 have authority to ascertain the facts regarding all such applications  
8 in such reasonable manner as it may deem proper. When an application  
9 for remission or mitigation is made, a penalty incurred under this  
10 section is due twenty-eight days after receipt of the notice setting  
11 forth the disposition of the application, unless an application for an  
12 adjudicative proceeding to contest the disposition is filed as provided  
13 in subsection (4) of this section.

14 (4)) Within twenty-eight days after notice is received, the person  
15 incurring the penalty may file an application for an adjudicative  
16 proceeding and may pursue subsequent review as provided in chapter  
17 34.05 RCW and applicable rules of the department or board of health.

18 ((+5)) (4) A penalty imposed by a final administrative order  
19 ((after an adjudicative proceeding)) is due upon service of the final  
20 administrative order. A person who fails to pay a penalty assessed by  
21 a final administrative order within thirty days of service of the final  
22 administrative order shall pay, in addition to the amount of the  
23 penalty, interest at the rate of one percent of the unpaid balance of  
24 the assessed penalty for each month or part of a month that the penalty  
25 remains unpaid, commencing with the month in which the notice of  
26 penalty was served and such reasonable attorney's fees as are incurred  
27 in securing the final administrative order.

28 (5) A person who institutes proceedings for judicial review of a  
29 final administrative order assessing a civil penalty under this chapter  
30 shall place the full amount of the penalty in an interest bearing  
31 account in the registry of the reviewing court. At the conclusion of  
32 the proceeding the court shall, as appropriate, enter a judgment on  
33 behalf of the department and order that the judgment be satisfied to  
34 the extent possible from moneys paid into the registry of the court or  
35 shall enter a judgment in favor of the person appealing the penalty  
36 assessment and order return of the moneys paid into the registry of the  
37 court together with accrued interest to the person appealing. The  
38 judgment may award reasonable attorney's fees for the cost of the  
39 attorney general's office in representing the department.

1       (6) (~~The attorney general may bring an action in the name of the~~  
2 ~~department in the superior court of Thurston county, or of any county~~  
3 ~~in which such violator may do business, to collect a penalty.~~

4       ~~(7))~~ If no appeal is taken from a final administrative order  
5 assessing a civil penalty under this chapter, the department may file  
6 a certified copy of the final administrative order with the clerk of  
7 the superior court in which the public water system is located or in  
8 Thurston county, and the clerk shall enter judgment in the name of the  
9 department and in the amount of the penalty assessed in the final  
10 administrative order.

11       (7) A judgment entered under subsection (5) or (6) of this section  
12 shall have the same force and effect as, and is subject to all of the  
13 provisions of law relating to, a judgment in a civil action, and may be  
14 enforced in the same manner as any other judgment of the court in which  
15 it is entered.

16       (8) All penalties imposed under this section shall be payable to  
17 the state treasury and credited to the general fund.

18       (9) Except in cases of public health emergencies, the department  
19 may not impose monetary penalties under this section unless a prior  
20 effort has been made to resolve the violation informally.

21       **Sec. 3.** RCW 70.119A.050 and 1989 c 422 s 8 are each amended to  
22 read as follows:

23       Each local board of health that is enforcing the regulations under  
24 an agreement with the department allocating state and local  
25 responsibility is authorized to impose and collect civil penalties for  
26 violations within the area of its responsibility under the same  
27 limitations and requirements imposed upon the department by RCW  
28 70.119A.030 and 70.119A.040, except that judgment shall be entered in  
29 the name of the local board penalties shall be placed into the general  
30 fund of the county, city, or town operating the local board of  
31 health(~~, and the prosecuting attorney, or city, or town attorney shall~~  
32 ~~bring the actions to collect the unpaid penalties)).~~

33       NEW SECTION. **Sec. 4.** A new section is added to chapter 70.119A  
34 RCW to read as follows:

35       (1)(a) Except as otherwise provided in (b) of this subsection, the  
36 secretary or his or her designee shall have the right to enter a  
37 premises under the control of a public water system at reasonable times

1 with prior notification in order to determine compliance with laws and  
2 rules administered by the department of health to test, inspect, or  
3 sample features of a public water system and inspect, copy, or  
4 photograph monitoring equipment or other features of a public water  
5 system, or records required to be kept under laws or rules regulating  
6 public water systems. For the purposes of this section, "premises  
7 under the control of a public water system" does not include the  
8 premises or private property of a customer of a public water system  
9 past the point on the system where the service connection is made.

10 (b) The secretary or his or her designee need not give prior  
11 notification to enter a premises under (a) of this subsection if the  
12 purpose of the entry is to ensure compliance by the public water system  
13 with a prior order of the department or if the secretary or the  
14 secretary's designee has reasonable cause to believe the public water  
15 system is violating the law and poses a serious threat to public health  
16 and safety.

17 (2) The secretary or his or her designee may apply for an  
18 administrative search warrant to a court official authorized to issue  
19 a criminal search warrant. An administrative search warrant may be  
20 issued for the purposes of inspecting or examining property, buildings,  
21 premises, place, books, records, or other physical evidence, or  
22 conducting tests or taking samples. The warrant shall be issued upon  
23 probable cause. It is sufficient probable cause to show any of the  
24 following:

25 (a) The inspection, examination, test, or sampling is pursuant to  
26 a general administrative plan to determine compliance with laws or  
27 rules administered by the department; or

28 (b) The secretary or his or her designee has reason to believe that  
29 a violation of a law or rule administered by the department has  
30 occurred, is occurring, or may occur.

31 (3) The local health officer or the designee of a local health  
32 officer of a local board of health that is enforcing rules regulating  
33 public water systems under an agreement with the department allocating  
34 state and local responsibility is authorized to conduct investigations  
35 and to apply for, obtain, and execute administrative search warrants  
36 necessary to perform the local board's agreed-to responsibilities under  
37 the same limitations and requirements imposed on the department under  
38 this section."

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2 By Committee on Ecology & Parks

ADOPTED 4/1/93

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4 On page 1, line 1 of the title, after "requirements;" strike the  
5 remainder of the title and insert "amending RCW 70.119A.030,  
6 70.119A.040, and 70.119A.050; adding a new section to chapter 70.119A  
7 RCW; and prescribing penalties."

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