
HOUSE BILL 2768

State of Washington

55th Legislature

1998 Regular Session

By Representatives Keiser, McCune, Constantine, Poulsen, Mason, Ogden, Wood, Cole and Regala

Read first time 01/20/98. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to environmental settlements and penalties;
2 amending RCW 43.21B.300 and 43.08.250; adding new sections to chapter
3 43.21A RCW; and creating new sections.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** FINDINGS AND PURPOSE. The legislature finds
6 that water pollution incidents result in fines and penalties that are
7 presently used for a variety of purposes unrelated to restoring the
8 damage caused by the pollution or otherwise benefiting the water and
9 other natural resources enjoyed by Washington citizens. The
10 legislature further finds that often the settlement of enforcement
11 actions relating to environmental violations does not adequately
12 involve the communities in which the violations occurred and allow for
13 the recommendations of those communities on expending funds under
14 consideration in the settlement.

15 Therefore the purpose of this act is to dedicate water pollution
16 fines and penalties to the restoration and improvement of Washington's
17 environmental quality and to ensure a greater voice in the expenditure
18 of settlement funds by communities in which the environmental violation
19 occurred.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.21A RCW
2 to read as follows:

3 ENVIRONMENTAL RESTORATION AND IMPROVEMENT ACCOUNT CREATED. (1) The
4 environmental restoration and improvement account is created in the
5 state treasury. All receipts, fines, penalties, and damages recovered
6 under RCW 90.48.140 and 90.48.144 must be deposited in the account.
7 The treasurer shall require the depositing entity to identify the city
8 or county where the violation occurred. Where the violation caused
9 environmental damage in more than one city or county, the depositing
10 entity may allocate a portion to each such city or county in reasonable
11 proportion to the damage occurring in each city or county. The
12 treasurer shall maintain records of total moneys in the account
13 identified by city and county.

14 (2) Moneys in the account may be spent only after appropriation.

15 (3) Moneys in the account shall be expended by the department
16 consistent with the limitations and procedures of this section for the
17 restoration and enhancement of the state's environmental and natural
18 resources, to improve the capacity of local governments to protect and
19 restore the environmental resources within their jurisdiction, and for
20 public education and involvement activities directly related to
21 environmental protection, restoration, and enhancement.

22 (4) The object of each expenditure from the account shall be
23 identified by city or county. The total expenditures identified for
24 each city or county in the fiscal biennium shall not exceed the total
25 deposits projected to be deposited to the account during such biennium
26 that are identified for that city or county.

27 (5) In developing a proposed expenditure from the account, the
28 department shall seek recommendations from the governing bodies of the
29 cities and counties in which the funds will be expended or that will be
30 benefited by the expenditure. The department shall also seek
31 recommendations from community and civic organizations with members
32 residing in that vicinity.

33 (6) The actions of the treasurer, depositing entity, and department
34 under this section shall be committed to their sole discretion and
35 shall not be reviewable in a judicial proceeding.

36 **Sec. 3.** RCW 43.21B.300 and 1993 c 387 s 23 are each amended to
37 read as follows:

1 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,
2 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
3 90.56.330 shall be imposed by a notice in writing, either by certified
4 mail with return receipt requested or by personal service, to the
5 person incurring the penalty from the department(~~(, the administrator~~
6 ~~of the office of marine safety,)~~) or the local air authority,
7 describing the violation with reasonable particularity. Within fifteen
8 days after the notice is received, the person incurring the penalty may
9 apply in writing to the department, the administrator, or the authority
10 for the remission or mitigation of the penalty. Upon receipt of the
11 application, the department, the administrator, or authority may remit
12 or mitigate the penalty upon whatever terms the department, the
13 administrator, or the authority in its discretion deems proper. The
14 department or the authority may ascertain the facts regarding all such
15 applications in such reasonable manner and under such rules as it may
16 deem proper and shall remit or mitigate the penalty only upon a
17 demonstration of extraordinary circumstances such as the presence of
18 information or factors not considered in setting the original penalty.

19 (2) Any penalty imposed under this section may be appealed to the
20 pollution control hearings board in accordance with this chapter if the
21 appeal is filed with the hearings board and served on the department,
22 the administrator, or authority thirty days after receipt by the person
23 penalized of the notice imposing the penalty or thirty days after
24 receipt of the notice of disposition of the application for relief from
25 penalty.

26 (3) A penalty shall become due and payable on the later of:

27 (a) Thirty days after receipt of the notice imposing the penalty;

28 (b) Thirty days after receipt of the notice of disposition on
29 application for relief from penalty, if such an application is made; or

30 (c) Thirty days after receipt of the notice of decision of the
31 hearings board if the penalty is appealed.

32 (4) If the amount of any penalty is not paid to the department or
33 the administrator within thirty days after it becomes due and payable,
34 the attorney general, upon request of the department or the
35 administrator, shall bring an action in the name of the state of
36 Washington in the superior court of Thurston county, or of any county
37 in which the violator does business, to recover the penalty. If the
38 amount of the penalty is not paid to the authority within thirty days
39 after it becomes due and payable, the authority may bring an action to

1 recover the penalty in the superior court of the county of the
2 authority's main office or of any county in which the violator does
3 business. In these actions, the procedures and rules of evidence shall
4 be the same as in an ordinary civil action.

5 (5) All penalties recovered shall be paid into the state treasury
6 and credited to the general fund except those penalties imposed
7 pursuant to: RCW 18.104.155, which shall be credited to the
8 reclamation account as provided in RCW 18.104.155(7)((~~7~~)); RCW
9 70.94.431, the disposition of which shall be governed by that
10 provision((~~7~~)); RCW 70.105.080, which shall be credited to the
11 hazardous waste control and elimination account, created by RCW
12 70.105.180((~~7~~ and)); RCW 90.56.330, which shall be credited to the
13 coastal protection fund created by RCW 90.48.390; and RCW 90.48.144,
14 which shall be credited to the environmental restoration and
15 improvement account created in section 2 of this act.

16 **Sec. 4.** RCW 43.08.250 and 1997 c 149 s 910 are each amended to
17 read as follows:

18 (1) Except as provided in subsection (2) of this section, the money
19 received by the state treasurer from fees, fines, forfeitures,
20 penalties, reimbursements or assessments by any court organized under
21 Title 3 or 35 RCW, or chapter 2.08 RCW, shall be deposited in the
22 public safety and education account which is hereby created in the
23 state treasury. The legislature shall appropriate the funds in the
24 account to promote traffic safety education, highway safety, criminal
25 justice training, crime victims' compensation, judicial education, the
26 judicial information system, civil representation of indigent persons,
27 winter recreation parking, and state game programs. During the fiscal
28 biennium ending June 30, 1999, the legislature may appropriate moneys
29 from the public safety and education account for purposes of appellate
30 indigent defense, the criminal litigation unit of the attorney
31 general's office, the treatment alternatives to street crimes program,
32 crime victims advocacy programs, justice information network
33 telecommunication planning, sexual assault treatment, operations of the
34 office of administrator for the courts, security in the common schools,
35 criminal justice data collection, and Washington state patrol criminal
36 justice activities.

37 (2) The money received by the state treasurer from fines and
38 penalties imposed under RCW 90.48.140 shall be deposited in the

1 environmental restoration and improvement account created in section 2
2 of this act.

3 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.21A RCW
4 to read as follows:

5 SETTLEMENTS OF ENVIRONMENTAL ACTIONS. (1) This section shall be
6 applicable when the attorney general proposes to settle an action
7 arising from an alleged violation of any provision of water quality
8 laws under chapter 90.48 RCW, in which the proposed settlement requires
9 commitments by other parties in lieu of the imposition of a penalty or
10 fine or the recovery of damages. The attorney general may agree to
11 such a settlement if:

12 (a) The department provides public notice of the proposed
13 settlement and an opportunity for public comment;

14 (b) The department has obtained the recommendations of the
15 governing bodies of the cities and counties in the vicinity of the
16 alleged violation; and

17 (c) The department finds, following such public comment and
18 consultation, that the commitments in the proposed settlement are
19 directly related to the protection and restoration of the environmental
20 resources in the vicinity of the alleged violation.

21 (2) This section shall not be construed to preclude an action for
22 liability based upon any other claim or statute not expressly precluded
23 by the terms of the settlement.

24 (3) This section shall not be construed to limit, modify, or affect
25 in any way the authority of the attorney general to settle any action
26 in an administrative or judicial proceeding, except where the specific
27 provisions of this section are applicable.

28 NEW SECTION. **Sec. 6.** CAPTIONS NOT LAW. Captions used in this act
29 are not any part of the law.

30 NEW SECTION. **Sec. 7.** If any provision of this act or its
31 application to any person or circumstance is held invalid, the
32 remainder of the act or the application of the provision to other
33 persons or circumstances is not affected.

--- END ---