
HOUSE BILL 1960

State of Washington

57th Legislature

2001 Regular Session

By Representatives Edmonds, Cody, Kenney, Poulsen, Lantz, Hurst, Keiser, Miloscia, Darneille, Lovick and Romero

Read first time 02/09/2001. Referred to Committee on Judiciary.

1 AN ACT Relating to citizen enforcement of land use and shorelines
2 laws; adding a new chapter to Title 4 RCW; and prescribing penalties.

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

4 NEW SECTION. **Sec. 1.** It is the policy of the state of Washington
5 that laws enacted to protect natural resources and the environment be
6 enforced. Limitations on governmental abilities to enforce those laws,
7 due to the high volume of activities to which environmental standards
8 apply and the finite nature of governmental resources, are recognized.
9 The purpose of this chapter is to empower citizens to supplement
10 government enforcement of those laws.

11 NEW SECTION. **Sec. 2.** The definitions in this section apply
12 throughout this chapter unless the context clearly requires otherwise.

13 (1) "Citizen" means any person or persons.

14 (2) "Person" means an individual, corporation, partnership,
15 association, state, commission, or other government entity.

16 (3) "Environmental standard or requirement" means:

17 (a) Any condition placed in or on the issuance of any permit or
18 authorization under chapter 43.21C RCW;

1 (b) Any prohibition or requirement adopted under chapter 36.70A or
2 90.58 RCW or other zoning or land use law if the prohibition or
3 requirement has been enacted or adopted for the purpose of protecting
4 sensitive areas, natural resources, or human health;

5 (c) The requirement to have a permit or submit an application
6 pursuant to any condition of a permit or authorization issued under and
7 any prohibition or requirement of or adopted under chapters 58.17,
8 36.70, 35A.63, and 35.63 RCW, platting and zoning authority for
9 counties and cities.

10 NEW SECTION. **Sec. 3.** (1) Except as provided in subsection (2) of
11 this section, any citizen may commence a civil action on his or her own
12 behalf against any person who is alleged to have violated an
13 environmental standard or requirement, or an order issued by a
14 governmental agency with respect to such a standard or requirement, if
15 there is evidence of more than one day or instance of violation. Such
16 civil action may be brought in the superior court for the county in
17 which the alleged violation occurred or as otherwise provided in
18 chapter 4.12 RCW or RCW 36.01.050. The superior court shall have
19 jurisdiction to enforce the environmental standard or requirement or
20 order, to grant other injunctive relief as justice may require, to
21 assess civil penalties consistent with subsection (5) of this section,
22 and to award costs of litigation, including reasonable attorneys' and
23 expert witness' fees consistent with subsection (6) of this section.

24 (2) No action may be commenced under subsection (1) of this
25 section:

26 (a) Prior to sixty days after the plaintiff has given notice by
27 certified mail or personal service of the violation; or

28 (b) If an agency with authority to enforce the standard or
29 requirement alleged to be violated has commenced and is diligently
30 prosecuting an administrative or in-court action, if that action:

31 (i) Has resulted or will result in a cessation of all alleged
32 violations;

33 (ii) Has resulted or may result in assessment of a monetary penalty
34 in an amount substantially equivalent to the violator's economic
35 benefit from the violation; and

36 (iii) Was commenced before the commencement of an action under
37 subsection (1) of this section.

1 (3) Notice under this section shall be by certified mail or
2 personal service:

3 (a) To the alleged violator of the standard or requirement;

4 (b) To the state attorney general;

5 (c) To the agency with primary responsibility for enforcement of
6 the standard or requirement;

7 (d) Specific enough to allow the alleged violator to identify the
8 actions, conduct, or circumstances that will be the subject of the
9 action; and

10 (e) Considered served on the postmark date or date of actual
11 service, whichever is earlier.

12 (4) An action under subsection (1) of this section may be brought
13 immediately upon giving notice only if the violations present a
14 substantial risk of immediate and irreparable endangerment to the
15 environment.

16 (5) The court, upon finding violation of an environmental standard
17 or requirement, shall assess a civil penalty against the violator in an
18 amount not to exceed ten thousand dollars per violation per day of
19 violation unless justice so requires. In determining an appropriate
20 penalty, the court shall consider the seriousness of the violations,
21 any good faith efforts or lack of good faith efforts to, the duration
22 of the violations, the economic benefit of the violations to the
23 violator, and such other matters as justice may require. Unless
24 injustice would result, the court shall assess a civil penalty greater
25 than the economic benefit of the violations to the violator. Civil
26 penalties assessed under this section shall be deposited as provided by
27 the statutes upon which the violation is based.

28 (6) Unless injustice would result, the court, in issuing any final
29 order in any action brought under this section, shall award costs of
30 litigation, including reasonable attorneys' and expert witness' fees,
31 to a prevailing or substantially prevailing party, payable by the
32 opposing party or parties.

33 (7) This section does not restrict any right which any person or
34 class of persons may have under any statute or common law to seek
35 enforcement of any standard or requirement or to seek any other relief.

36 NEW SECTION. **Sec. 4.** This chapter does not alter or diminish any
37 legal obligation otherwise required in common law or by statute or
38 rule, and nothing in this chapter creates or enlarges any defense in

1 any action to enforce such legal obligation. Penalties and sanctions
2 imposed under this chapter are in addition to any penalties or
3 sanctions otherwise prescribed by law. This chapter does not impose
4 any additional liability upon any state or local government for failure
5 to enforce any violation subject to this chapter.

6 NEW SECTION. **Sec. 5.** Sections 1 through 4 of this act constitute
7 a new chapter in Title 4 RCW.

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