

SSB 5028 - H COMM AMD

By Committee on Agriculture & Natural Resources

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 90.48 RCW
4 to read as follows:

5 In exercising authority according to this chapter, the department
6 may only affect the beneficial use of a water right as provided in this
7 section.

8 (1) Before applying authority according to this chapter to address
9 a water quality problem caused by the unauthorized use of water, the
10 department shall first establish that the use of water is not
11 authorized according to chapter 90.03, 90.14, 90.40, or 90.44 RCW. The
12 department shall establish that the use of water is unauthorized
13 through the issuance of a formal action that is not appealed or is
14 affirmed on appeal. When the use of water is established as
15 unauthorized, the department may use authority under this chapter to
16 address water quality problems resulting from the unauthorized water
17 use.

18 (2) When issuing water quality certifications according to section
19 401 of the federal Clean Water Act (33 U.S.C. Sec. 1341), the
20 department may condition federal hydropower licenses to ensure that the
21 state's water quality standards are met and that adequate streamflows
22 are maintained.

23 **Sec. 2.** RCW 90.03.600 and 1995 c 403 s 635 are each amended to
24 read as follows:

25 The department must follow the sequence of enforcement actions,
26 including levying a civil penalty, as provided in RCW 90.03.605. In
27 determining the amount of penalty to be levied, the department shall
28 consider the seriousness of the violation, whether the violation is
29 repeated or continuous after notice is given of the violation, and

1 whether any damage has occurred to the health or property of other
2 persons. Except as provided in RCW 43.05.060 through 43.05.080 and
3 43.05.150, (~~the power is granted to~~) the department of ecology (~~to~~)
4 may levy civil penalties (~~of up to~~) ranging from one hundred dollars
5 to ten thousand dollars per day for violation of any of the provisions
6 of this chapter and chapters 43.83B, 90.22, and 90.44 RCW, and rules,
7 permits, and similar documents and regulatory orders of the department
8 of ecology adopted or issued pursuant to such chapters. The procedures
9 of RCW 90.48.144 shall be applicable to all phases of the levying of a
10 penalty as well as review and appeal of the same."

11 Correct the title.

EFFECT: Replaces water pollution definition and enforcement provisions with provisions: (1) Requiring the Department of Ecology (DOE), when addressing water quality problems from unauthorized water use, to establish the water use is unauthorized under the water resources statutes before exercising authority under the water pollution control statutes; and (2) specifying that DOE may, when issuing water quality certifications, condition federal hydropower licenses to ensure water quality standards are met and adequate streamflows are maintained. Adds provisions authorizing the DOE to levy penalties under the water code ranging from \$100 to \$10,000 per day (rather than \$100) based on a consideration of factors (e.g., severity of the violation, repeated/continuous nature of violation, and damage) and the sequence of enforcement actions specified in the water code.

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