
SENATE BILL 5285

State of Washington

58th Legislature

2003 Regular Session

By Senator Fraser

Read first time 01/21/2003. Referred to Committee on Natural Resources, Energy & Water.

1 AN ACT Relating to water resources management; amending RCW
2 90.03.600 and 43.21B.300; adding new sections to chapter 90.03 RCW;
3 adding a new section to chapter 43.27A RCW; adding a new section to
4 chapter 90.42 RCW; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.03 RCW
7 to read as follows:

8 (1) The department shall, through a network of water masters
9 appointed under this chapter, stream patrollers appointed under chapter
10 90.08 RCW, and other assigned compliance staff, achieve compliance with
11 the water laws and rules of the state of Washington in the following
12 sequence:

13 (a) The department shall prepare and distribute technical and
14 educational information to assist water users in complying with the
15 requirements of their water rights and applicable water laws;

16 (b) When the department determines that a violation has occurred or
17 is about to occur, it shall first attempt to achieve voluntary
18 compliance by informing and educating the responsible person or persons
19 regarding the law, the reason that the action or incipient action is

1 not allowed under the law, and the potential penalties and sanctions
2 that may be brought if compliance is not achieved. As part of this
3 first response, the department shall offer technical information and
4 assistance to the person in identifying alternative means to accomplish
5 the person's purposes within the framework of the law; and

6 (c) If education and technical assistance do not achieve
7 compliance, the department shall issue a notice of violation, a formal
8 administrative order under RCW 43.27A.190, or assess penalties under
9 RCW 90.03.600, unless the noncompliance is corrected expeditiously or
10 the department determines no impairment or harm.

11 (2) This section is not intended to prevent the department from
12 taking immediate action to cause a violation to be ceased immediately
13 if in the opinion of the department the nature of the violation is
14 causing or is likely to cause immediate harm to other water rights or
15 to public resources.

16 (3) The department shall to the extent practicable station its
17 compliance personnel within the watershed communities they serve.

18 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.27A RCW
19 to read as follows:

20 (1) The purpose of this section is to set forth the powers of the
21 department to regulate the withdrawal or diversion of public waters and
22 water or water rights related thereto including regulation based on
23 dates of priority or other pertinent factors. Regulatory actions taken
24 under this section shall be based on examination and determination by
25 the department or the court, as applicable, of the various water rights
26 involved according to the department's records and other records and
27 pertinent facts. The powers set forth in this section may be exercised
28 whether or not a general adjudication relating to the water rights
29 involved has been conducted.

30 (2) In a regulatory situation (a) where a water right or all water
31 rights proposed for regulation by the department, as well as any right
32 or rights of a senior priority that the proposed regulation is designed
33 to protect, is or are embodied in a certificate or certificates issued
34 under RCW 90.03.240, 90.03.330, 90.38.040, 90.42.040, or 90.44.060 or
35 a permit or permits issued pursuant to RCW 90.03.290 or 90.44.060; or
36 (b) where a flow or level has been established by rule pursuant to
37 chapter 90.22 or 90.54 RCW; or (c) where a provisional flow or level

1 has been adopted pursuant to RCW 43.21B.300; or (d) where it appears to
2 the department that public waters are being withdrawn without any right
3 or other appropriate authority whatsoever, the department in its
4 discretion is authorized to regulate the right or rights under either
5 RCW 43.27A.190 or subsection (3) of this section.

6 (3) In a regulatory situation where one or more of the water rights
7 proposed for regulation by the department, as well as any right or
8 rights of a senior priority that the proposed regulation is designed to
9 protect, is not or are not embodied in a permit or certificate as
10 described in subsection (2) of this section, the department, as its
11 sole and exclusive power to regulate, may bring an appropriate action
12 at law or in equity, including seeking injunctive relief, as it may
13 deem necessary. Where actions are brought in a state court, the
14 actions shall be initiated in the superior court of the county where
15 the point or points of diversion of the water right or rights proposed
16 for regulation are located. If the points of diversion are located in
17 more than one county, the department may bring the action in a county
18 where a point of diversion is located.

19 (4) This section does not authorize the department to accomplish a
20 general adjudication of water rights proceeding or the substantial
21 equivalent of a general adjudication of water rights. The exclusive
22 procedure for accomplishing a general adjudication of water rights is
23 under RCW 90.03.110 through 90.03.245 or 90.44.220.

24 (5) This section does not amend, revise, or repeal RCW 90.14.130 or
25 90.14.200.

26 (6) This section does not in any way modify regulatory powers
27 previously placed with the department except as provided in subsections
28 (2) and (3) of this section.

29 **Sec. 3.** RCW 90.03.600 and 1995 c 403 s 635 are each amended to
30 read as follows:

31 (1) Except as provided in RCW 43.05.060 through 43.05.080 and
32 43.05.150, the power is granted to the department (~~(of ecology)~~) to
33 levy civil penalties (~~(of up to)~~) from one hundred to one thousand
34 dollars per day for violation of any of the provisions of this chapter
35 and chapters 43.83B, 90.22, (~~(and)~~) 90.44, 90.54, and 90.66 RCW, and
36 rules, permits, (~~(and similar documents)~~) certificates, and regulatory
37 orders of the department (~~(of ecology)~~) adopted or issued pursuant to

1 such chapters. Each and every violation is a separate and distinct
2 offense. Every act of commission or omission that results in, aids, or
3 abets in the violation is considered a violation under this section and
4 subject to the penalty as provided for in this section.

5 (2) A minor violation is a violation that does not seriously
6 threaten public health, safety, or the environment and is subject to a
7 penalty of no more than one hundred dollars. Minor violations include
8 paperwork violations such as failure to provide metering records or
9 other required water use records upon request.

10 (3) The procedures of RCW 90.48.144 shall be applicable to all
11 phases of the levying of a penalty as well as review and appeal of the
12 same.

13 **Sec. 4.** RCW 43.21B.300 and 2001 c 36 s 2 are each amended to read
14 as follows:

15 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,
16 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
17 90.56.330 shall be imposed by a notice in writing, either by certified
18 mail with return receipt requested or by personal service, to the
19 person incurring the penalty from the department or the local air
20 authority, describing the violation with reasonable particularity.
21 Within fifteen days after the notice is received, the person incurring
22 the penalty may apply in writing to the department or the authority for
23 the remission or mitigation of the penalty. Upon receipt of the
24 application, the department or authority may remit or mitigate the
25 penalty upon whatever terms the department or the authority in its
26 discretion deems proper. The department or the authority may ascertain
27 the facts regarding all such applications in such reasonable manner and
28 under such rules as it may deem proper and shall remit or mitigate the
29 penalty only upon a demonstration of extraordinary circumstances such
30 as the presence of information or factors not considered in setting the
31 original penalty.

32 (2) Any penalty imposed under this section may be appealed to the
33 pollution control hearings board in accordance with this chapter if the
34 appeal is filed with the hearings board and served on the department or
35 authority thirty days after receipt by the person penalized of the
36 notice imposing the penalty or thirty days after receipt of the notice
37 of disposition of the application for relief from penalty.

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

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

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

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

7 (4) If the amount of any penalty is not paid to the department
8 within thirty days after it becomes due and payable, the attorney
9 general, upon request of the department, shall bring an action in the
10 name of the state of Washington in the superior court of Thurston
11 county, or of any county in which the violator does business, to
12 recover the penalty. If the amount of the penalty is not paid to the
13 authority within thirty days after it becomes due and payable, the
14 authority may bring an action to recover the penalty in the superior
15 court of the county of the authority's main office or of any county in
16 which the violator does business. In these actions, the procedures and
17 rules of evidence shall be the same as in an ordinary civil action.

18 (5) All penalties recovered shall be paid into the state treasury
19 and credited to the general fund except those penalties imposed
20 pursuant to RCW 18.104.155, which shall be credited to the reclamation
21 account as provided in RCW 18.104.155(7), RCW 70.94.431, the
22 disposition of which shall be governed by that provision, RCW
23 70.105.080, which shall be credited to the hazardous waste control and
24 elimination account, created by RCW 70.105.180, (~~and~~) RCW 90.56.330,
25 which shall be credited to the coastal protection fund created by RCW
26 90.48.390, and RCW 90.03.600, which shall be credited to the stream
27 flow restoration account created by section 5 of this act.

28 NEW SECTION. Sec. 5. A new section is added to chapter 90.42 RCW
29 to read as follows:

30 The stream flow restoration account is created in the state
31 treasury. All receipts from penalties under RCW 43.21B.300 and
32 90.03.600 must be deposited into the account. Expenditures from the
33 account may be used only for the department to purchase or lease water
34 rights for placement in the trust water rights program created in this
35 chapter and chapter 90.38 RCW. Moneys in the stream flow restoration
36 account may be spent only after appropriation.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.03 RCW
2 to read as follows:

3 The department may establish and maintain a stream keeper volunteer
4 program. Stream keeper volunteers shall be appointed by the director
5 to assist with administration of the water code and be assigned to any
6 water resource in the state, including but not limited to designated
7 water master districts. Where watershed management plans are being
8 developed or implemented under chapter 90.82 RCW, the director shall
9 consult with the planning unit or plan implementing entity before
10 making an appointment of a stream keeper volunteer for the geographic
11 area to be covered by the watershed management plan. The duties of
12 stream keeper volunteers are limited to providing information and
13 assistance regarding water use, facilitating cooperative arrangements
14 among water right holders during periods of shortage, and other
15 nonregulatory duties as determined by the department. The department
16 may consult with the Washington State University cooperative extension
17 service and other suitable entities regarding recruitment of stream
18 keeper volunteers, as well as enter into agreements for education and
19 training of volunteers.

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