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SENATE BILL 5698

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State of Washington                      58th Legislature                      2003 Regular Session

By Senators Kline, Fraser, Keiser and Jacobsen

Read first time 02/06/2003. Referred to Committee on Judiciary.

1            AN ACT Relating to citizen enforcement of health and environmental  
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 public health, natural resources, and the  
6 environment be enforced. Limitations on governmental abilities to  
7 enforce those laws, due to the high volume of activities to which  
8 health and environmental standards apply and the finite nature of  
9 governmental resources, are recognized. The purpose of this chapter is  
10 to empower citizens to supplement 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 or public health standard or requirement" means:

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

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

7 (c) The requirement to have a permit or submit an application  
8 pursuant to any condition of a permit or authorization issued under and  
9 any prohibition or requirement of or adopted under:

10 (i) Chapter 77.55 RCW, hydraulic projects;

11 (ii) Chapter 76.09 RCW, the forest practices act;

12 (iii) Chapter 90.48 RCW, water pollution control;

13 (iv) Chapter 70.95 RCW, solid waste;

14 (v) Chapter 70.105 RCW, the hazardous waste management act;

15 (vi) Chapter 90.76 RCW, underground storage tanks;

16 (vii) Chapter 15.58 RCW, the Washington pesticide control act;

17 (viii) Chapter 70.94 RCW, the Washington clean air act;

18 (ix) Chapters 90.03, 90.44, and 90.14 RCW, surface and ground water  
19 permits, change certificates, and water rights abandonment and  
20 relinquishment actions; and

21 (x) Chapters 58.17, 36.70, 35A.63, and 35.63 RCW, platting and  
22 zoning authority for counties and cities.

23 NEW SECTION. **Sec. 3.** (1) Except as provided in subsection (2) of  
24 this section, any citizen may commence a civil action on his or her own  
25 behalf against any person who is alleged to have violated an  
26 environmental or public health standard or requirement, or an order  
27 issued by a governmental agency with respect to such a standard or  
28 requirement, if there is evidence of more than one day or instance of  
29 violation. Such civil action may be brought in the superior court for  
30 the county in which the alleged violation occurred or as otherwise  
31 provided in chapter 4.12 RCW or RCW 36.01.050. The superior court  
32 shall have jurisdiction to enforce the environmental or public health  
33 standard or requirement or order, to grant other injunctive relief as  
34 justice may require, to assess civil penalties consistent with  
35 subsection (5) of this section, and to award costs of litigation,  
36 including reasonable attorneys' and expert witness' fees consistent  
37 with subsection (6) of this section.

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

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

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

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

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

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

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

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

18 (b) To the state attorney general;

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

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

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

26 (4) An action under subsection (1) of this section may be brought  
27 immediately upon giving notice only if the violations present a  
28 substantial risk of immediate and irreparable endangerment to human  
29 health or the environment.

30 (5) The court, upon finding violation of an environmental or public  
31 health standard or requirement, shall assess a civil penalty against  
32 the violator in an amount not to exceed ten thousand dollars per  
33 violation per day of violation unless justice so requires. In  
34 determining an appropriate penalty, the court shall consider the  
35 seriousness of the violations, any good faith efforts or lack of good  
36 faith efforts to, the duration of the violations, the economic benefit  
37 of the violations to the violator, and such other matters as justice  
38 may require. Unless injustice would result, the court shall assess a

1 civil penalty greater than the economic benefit of the violations to  
2 the violator. Civil penalties assessed under this section shall be  
3 deposited as provided by the statutes upon which the violation is  
4 based.

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

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

13 NEW SECTION. **Sec. 4.** This chapter does not alter or diminish any  
14 legal obligation otherwise required in common law or by statute or  
15 rule, and nothing in this chapter creates or enlarges any defense in  
16 any action to enforce such legal obligation. Penalties and sanctions  
17 imposed under this chapter are in addition to any penalties or  
18 sanctions otherwise prescribed by law. This chapter does not impose  
19 any additional liability upon any state or local government for failure  
20 to enforce any violation subject to this chapter.

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

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