
HOUSE BILL 2974

State of Washington

61st Legislature

2010 Regular Session

By Representatives Orcutt, Herrera, Taylor, McCune, Klippert, Pearson, Kretz, Warnick, and Johnson

Read first time 01/19/10. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to requiring documentation for enforcement actions
2 under chapter 77.55 RCW; amending RCW 77.15.300 and 77.55.291; and
3 adding a new section to chapter 77.55 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 77.55 RCW
6 to read as follows:

7 (1) Concurrent with the initiation of an enforcement action under
8 RCW 77.15.300, 77.55.291, or any other provision of this chapter, and
9 within existing resources, the department must provide the person
10 against whom an enforcement action is being taken with a statement of
11 violation prepared consistent with the requirements of this section.

12 (2) Any statement of violation prepared under this section must
13 include, at a minimum, the following contents:

14 (a) A detailed explanation of how the offending project is causing
15 harm to fish life;

16 (b) Evidence of individual fish actually being harmed by the
17 project, if any, including any documentation of instances of fish
18 mortality linked to the project; and

1 (c) A signature by a department biologist confirming that the
2 biologist has personally and physically investigated the impacts of the
3 project and attests to the accuracy of the information contained in the
4 statement of violation.

5 (3) The department may not pursue enforcement against any
6 individual for a violation of this chapter that arises after the
7 effective date of this section unless the statement of violation is
8 provided at the time of the initiation of the enforcement action.

9 **Sec. 2.** RCW 77.15.300 and 2000 c 107 s 239 are each amended to
10 read as follows:

11 (1) A person is guilty of unlawfully undertaking hydraulic project
12 activities if the person constructs any form of hydraulic project or
13 performs other work on a hydraulic project and:

14 (a) Fails to have a hydraulic project approval required under
15 chapter 77.55 RCW for such construction or work; or

16 (b) Violates any requirements or conditions of the hydraulic
17 project approval for such construction or work.

18 (2) Unlawfully undertaking hydraulic project activities is a gross
19 misdemeanor.

20 (3) Any enforcement action taken under this section must be
21 conducted consistent with section 1 of this act.

22 **Sec. 3.** RCW 77.55.291 and 2005 c 146 s 701 are each amended to
23 read as follows:

24 (1) The department may levy civil penalties of up to one hundred
25 dollars per day for violation of any provisions of RCW 77.55.021. The
26 penalty provided shall be imposed by notice in writing, either by
27 certified mail or personal service to the person incurring the penalty,
28 from the director or the director's designee describing the violation.

29 (2) Any person incurring any penalty under this chapter may appeal
30 the same under chapter 34.05 RCW to the director. Appeals shall be
31 filed within thirty days of receipt of notice imposing any penalty.

32 (3) The penalty imposed shall become due and payable thirty days
33 after receipt of a notice imposing the penalty unless an appeal is
34 filed. Whenever an appeal of any penalty incurred under this chapter
35 is filed, the penalty shall become due and payable only upon completion

1 of all review proceedings and the issuance of a final order confirming
2 the penalty in whole or in part.

3 (4) If the amount of any penalty is not paid within thirty days
4 after it becomes due and payable, the attorney general, upon the
5 request of the director, shall bring an action in the name of the state
6 of Washington in the superior court of Thurston county or of any county
7 in which such violator may do business, to recover such penalty. In
8 all such actions the procedure and rules of evidence shall be the same
9 as an ordinary civil action. All penalties recovered under this
10 section shall be paid into the state's general fund.

11 (5) Any enforcement action taken under this section must be
12 conducted consistent with section 1 of this act.

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